S. Hrg. 101-1246

WHISTLEBLOWER PROBLEMS IN THE FEDERAL GRAIN INSPECTION SERVICE

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

ALLEGATIONS OF REPRISAL BY OFFICIALS OF THE FEDERAL GRAIN INSPECTION SERVICE AGAINST WHISTLEBLOWERS

OCTOBER 4, 1990

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WHISTLEBLOWER PROBLEMS IN THE FEDERAL GRAIN INSPECTION SERVICE

THURSDAY, OCTOBER 4, 1990

U.S. Senate,
Committee on Agriculture, Nutrition, and Forestry,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room SR-428A, Russell Senate Office Building, Hon. Patrick J. Leahy (chairman of the committee), Hon. Max Baucus, presiding.

Present or submitting a statement: Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator Baucus. The hearing will come to order.

Let me first welcome everyone to this morning's hearing.

I have called the hearing today to look into allegations of reprisal by officials of the Federal Grain Inspection Service against whistleblowers. This hearing will focus on one whistleblower in particular, whose name is Dr. Clifford Watson.

Dr. Watson grew up in Hinsdale, Montana. He has a Ph.D. in cereal chemistry and is considered to be a brilliant scientist by many of his peers.

On November 10, 1987,[1] Dr. Watson testified before a Joint Agriculture Hearing in the Senate and House, regarding mistakes the Federal Grain Inspection Service made in recalibrating protein testing machines. Those mistakes ended up costing Montana Spring wheat producers about $4 million in 1987.

The testimony Dr. Watson gave at that time at that hearing was not favorable to FGIS upper management.

Since the hearing, Dr. Watson claims that he has been continually harassed by the Federal Grain Inspection Service officials. He claims he has been given work which only keeps him busy about 10 or 15 percent of the time. He has been assigned duties which are far below that of a GS-14 grade level. Such duties have included leasing refrigeration space and updating automobile license plate records of employees. He has been denied GS-14 level positions when they have become available within the Federal Grain Inspection Service. His position in Kansas City was abolished just 6 months after he was assigned to it and was transferred to Washington, DC. He was detailed to other assignments which were below his grade level twice for a total of 2 years. He claims that he was told by a superior after the November 10 hearing that his career with the Federal Grain Inspection Service was adversely affected, if not finished. He received a poor 1988 performance evaluation due specifically to his "testimony indicating disagreement with agency policy uncommunicated outside the agency." And, most recently, he was assigned to a project for which he is not qualified.

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[1] The joint hearing held on November 10, 1987, "The Impact of Federal Inspection Service Protein Measurement on Wheat Prices," S. Hrg. 100-561, before the Subcommittee on Agricultural Production and Stabilization of Prices of the Committee on Agriculture, Nutrition, and Forestry and the Subcommittee on Wheat, Soybeans, and Feed Grains of the Committee on Agriculture, see pp. 209-356.

My staff requested a number of times since last spring to have Dr. Watson's concerns reviewed and addressed by the USDA. To date, no satisfactory action has been taken on his behalf.

Just last month, my staff requested a meeting with Mr. Foltz to discuss the case and try to find a solution. That request was denied.

Instead, we got a letter suggesting that Dr. Watson should pursue his administrative remedies, a number of which he has already pursued to no avail.

It appears that the USDA has no intention of addressing Dr. Watson's concerns. All evidence that I have seen shows that there has been a lot of lip-service, but no action. It appears that the USDA is just counting the days until Dr. Watson retires in January 1991. They hope this problem will just go away.

Well, I've got news for the USDA. This problem will not just go away. In fact, it will be around for some time to come.

Over this past summer, I have received many letters from every major farm group in Montana asking me to intervene on Dr. Watson's behalf. The letters come from the Montana Farmers Union, the Montana Grain Growers, and the Montana Farm Bureau. In addition, I received a letter from Montana's Department of Agriculture asking me to do what I can to correct the situation.

Most of these same groups have submitted testimony on Dr. Watson's behalf for today's hearing. I have never before experienced such an outpouring of support for a whistleblower as I have for Dr. Watson.

I also understand that this problem of reprisals against whistleblowers at the USDA is not uncommon. In fact, one of our witnesses who will testify later at this hearing will tell us that he has personally represented over 100 USDA whistleblower cases since 1988. That is a staggering number of cases. Clearly, the problem has to be addressed.

Today, I am sending a letter to the General Accounting Office requesting that they conduct an investigation of the USDA and its actions with regard to whistleblowers. I will ask that they perform this investigation to determine if there is systematic retaliation within the agency and, in the event there is, ask for recommendations on how to address the problem.

We must not allow other Federal Grain Inspection Service employees or other USDA employees to fear dismissal or having their careers damaged because of honest and truthful testimony before a congressional hearing. They must have the freedom to testify truthfully so that they can be assured that the integrity of our wheat protein inspection system is maintained.

That is the reason for holding this hearing today. I want to let all Federal Grain Inspection Service employees know that Congress will not sit idly by and let Government agencies retaliate against whistleblowers.

Our first panel consists of several individuals—first, the Administrator, Mr. Foltz; Mr. Robertson is Director of the Human Resources Division; Mr. N. Gail Jackson is Director of the Quality Assurance and Research Division, and the Deputy Administrator of the Federal Grain Inspection Service, Mr. David Galliart.

Mr. Foltz, you are the top man here, so why don't you begin.

STATEMENT OF JOHN C. FOLTZ, ADMINISTRATOR, FEDERAL GRAIN INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Mr. FOLTZ. Thank you Mr. Chairman.

We appreciate the chance to be here together today as part of an effort to assure the committee, as well as those producers and the industry members whom we serve, of the commitment of both the Department (USDA) and the Federal Grain Inspection Service (FGIS) to our standards and the best interests of our hard-working employees.

I have served as Administrator of FGIS since April of this year. Prior to my appointment as Administrator, I worked with both public and private sectors in agriculture, including 8 years of prior service with USDA, and more recently with the Ohio Grain and Feed Association and our the Ohio State Department of Agriculture. While I cannot be of assistance in responding to specific allegations in the case we are addressing here today, due to my recent arrival, I can address the agency's commitment to its mission and to its employees.

At the outset let me say that it is frustrating to appear under the circumstances we find ourselves in today. As I understand it, we have been asked to respond to allegations made by an employee of which we have no specific knowledge of factual findings. That employee, Dr. Clifford Watson, has not given the agency the benefit of considering his allegations through normal procedural channels, available to all of our employees.

Those options include the Merit Systems Protection Board and the Office of Special Counsel, and the Whistleblower Protection Act as administrated by the USDA Office of Inspector General. Consequently, it is difficult for us to address his concerns in an appropriate fashion to assure an objective review of his concerns. Frankly, this concerns me a great deal since it is of utmost importance that any valid concerns be given proper objective review, to assure both his integrity and that of the agency. I trust the committee shares those goals.

As you are aware, Mr. Chairman, we have been contacted by your office, as you suggested, to meet with Dr. Watson and members of your staff on this matter. We have declined these requests for precisely the same reasons. If this is indeed a "whistleblower hearing" or of a similar nature, the proper forum was established by the Congress when it passed the Whistleblower Protection Act of 1989, just last year, to assure a forum for Federal employees which strives to create a fair and equitable environment for those who allege that they have been subject to a retaliatory personnel action.

I can personally guarantee you that had these channels been pursued, this agency would cooperate in a full and complete manner with the appropriate bodies to ascertain the facts of Dr. Watson's case and respond in the spirit and to the letter of the law. It is in our own best interest to assure that our employees do feel free to objectively express their professional opinions, with the common goal we all share—assuring that our inspection system is not compromised.

Unfortunately, it appears that we will not have that opportunity today, although I am anxious to proceed under established procedures to resolve this case. It is obviously detrimental to our agency, creating a cloud of uncertainty. There is no one more anxious than I to assure our employees that we have not and will not stray from our commitment to them and the goals of FGIS.

As I have previously stated, I am not in the position to directly respond to the history of this case. I can, however, offer some observations as I have reviewed the circumstances surrounding it.

Upon reviewing the testimony which was presented at the joint hearing you mentioned in November of 1987, I find little in the way of conflicting testimony which would prompt retaliatory actions by the agency. In his testimony, the FGIS Administrator at the time, Mr. Kirk Miller, acknowledged the calibration problem and explained actions which had already been initiated to resolve that problem. Indeed, in testimony given prior to Dr. Watson's, Wilda Martinez of the Agricultural Research Service specifically addressed those corrective actions.

Dr. Watson's testimony, and the context in which it was given, was not revealing as it concerned the NIR-infrared calibration problem. It merely confirmed that which was acknowledged and addressed by both Mr. Miller and Ms. Martinez. Dr. Watson's testimony revealed only that he differed with others within the agency, as to the method by which the 0.2 percent adjustment was to have been accomplished, but did not differ with the resulting 0.2 percent adjustment achieved in itself. Additionally, he indicated that he would have applied the adjustment location-by-location rather than nationwide. He expressed no disagreement, it is important to note, with the application of the 0.2 percent adjustment in the locales under examination at the time.

In short, Dr. Watson revealed nothing which was or had the potential to be embarrassing to the agency. In reviewing the situation itself and Dr. Watson's personnel history with those who were directly responsible for his management, I am convinced that FGIS has not engaged in any action of harassment or retaliation against him as a direct result of his testimony on that occasion. The individuals who have direct knowledge of this case are with us today, to discuss the specific circumstances with you.

Should, after an objective review in the proper forum, it become apparent that Dr. Watson has in any way been intentionally harassed or retaliated against, I am here to assure you that I will take appropriate corrective action, to the extent deemed necessary to redress any proven adverse personnel actions. At this point, however, I do not believe we can objectively reach such a finding on this occasion.

Furthermore, let me reaffirm my commitment to the Federal Grain Inspection Service, its standards, its mission, and most importantly, its employees. I believe that we have not, and I assure you that we will not, under my management of the agency, take any actions against any employee for properly responding to a congressional request for information regarding personal knowledge of our standards or our methodology.

Grain quality is an issue of vital concern to grain producers and to the industry; particularly as we face increased competition in a global marketplace. Our goal is to assure the proper testing and certification of clean quality grain. Everything our good employees contribute to that effort will better enable FGIS to do what you in the Congress have charged us to do. Outstanding efforts by our dedicated employees will merit recognition, as we encourage their contributions on behalf of American agriculture.

In conclusion, we are hopeful that we can convey to you and to this committee our commitment to the high standards we have set. I am anxious for this particular case to receive a proper hearing in the appropriate forum. I urge Dr. Watson to pursue the appropriate channels available to him to address his concerns.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Mr. Foltz.

Next, Mr. Robertson.

STATEMENT OF GEORGE S. ROBERTSON, DIRECTOR, HUMAN RESOURCES DIVISION, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Mr. ROBERTSON. Good morning.

My name is George Robertson. I serve as the Director of the Human Resources Division, Animal and Plant Health Inspection Service. As the agency's Personnel Officer, I provide certain personnel management support to the Federal Grain Inspection Service under a reimbursable agreement. For the benefit of the committee, I am providing a brief synopsis of Dr. Watson's employment record, and a chronology of issues raised and actions taken with respect to Dr. Watson as contained in the files maintained by the Animal and Plant Health Inspection Service.

I am also providing an analysis, done by a member of my staff, of Dr. C.A. Watson's allegation that the Federal Grain Inspection Service has retaliated against him for testimony he gave at a joint hearing before the House Committee on Agriculture on November 10, 1987.[2]

DR. WATSON'S EMPLOYMENT RECORD

A review of Dr. Watson's official personnel folder indicates he has been a Federal employee for the past 23 years and 7 months, all of which time has been spent in the U.S. Department of Agriculture (USDA). He was initially hired in March 1967, as a chemist with the Agricultural Research Service, where he worked for 11 years before transferring to the Federal Grain Inspection Service in April 1978. Dr. Watson has been continually employed in the service of FGIS for the past 12½ years. The records indicate that Dr. Watson is well-qualified to occupy the current and past positions of his USDA employment. Otherwise, his employment record is unexceptional in that it contains no information adverse to or derogatory of Dr. Watson.

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[2] See pp. 11-28 for the material referred to by Mr. Robertson.

A synopsis of Dr. Watson's employment is as follows:

March 6, 1967—Career Conditional Appointment, Chemist, GS-1320-13, Agricultural Research Service, Beltsville, Maryland.
June 16, 1968—Reassignment, Chemist, GS-1320-13, ARS, Manhattan, Kansas.
May 17, 1970—Promotion, Research Chemist, GS-1320-14, ARS, Manhattan, Kansas.
September 29, 1974—Reassignment, Research Chemist, GS-1320-14, ARS, Fargo, North Dakota.
September 26, 1976—Change to Lower Grade (Position Reallocated Downward Due to Evaluation Review), Research Chemist, GS-1320-13, ARS, Fargo, North Dakota.
April 9, 1978—Promotion—CAO, Supv. Chemist, GS-1320-14, Federal Grain Inspection Service, Beltsville, Maryland.
June 4, 1978—Change in Duty Station, Supv. Chemist, GS-1320-14, FGIS, Kansas City, Missouri.
July 24, 1979—Change in Duty Station, Supv. Chemist, GS-1320-14, FGIS, Richards-Gebauer AFB, Missouri.
May 11, 1986—Reassignment, Chemist (Branch Chief), GM-1320-14, FGIS, Richards-Gebauer AFB, Missouri.
August 31, 1986—Change in Duty Station, Chemist (Branch Chief), GM-1320-14, FGIS, Kansas City, Missouri.
August 16, 1987—Reassignment, Grain Marketing Specialist, GM-1146-14, FGIS, Kansas City, Missouri.

Remains officially and permanently assigned to the Grain Marketing Specialist, GM-1146-14, position as of this date.

Aside from the record of Dr. Watson's official personnel folder, we are fully aware of the ongoing problems concerning Dr. Watson as several and various members of my staff, over the years, have been involved in advising and assisting both Dr. Watson and FGIS management regarding such issues. Records maintained separate and apart from the official personnel folder indicate recurring, perhaps more correctly, continuing problems, those problems stemming basically from Dr. Watson's concerns about his work assignments and how his work would be or had been evaluated. In consideration of those records, we would conclude that Dr. Watson's problems arise from the fact that his opinions differ with those of his supervisors and others about what work he should be doing, how he should be doing it, and how well he is doing it. He has not been able to substantiate that his opinions in this regard are correct and those who have properly reviewed the matters in the course of their assigned responsibilities have not concluded that management has misused or abused its authority in assigning work to Dr. Watson.

With regard to his work assignments beginning with his reassignment to the Assistant Director position.

On August 17, 1987, Dr. Watson was notified by his supervisor, Gail Jackson, Director, Standardization Division, that he was being reassigned that date into the new position of Assistant to the Director from his position of Chief, Quality Control Branch. Subsequently, on January 8, 1988, Dr. Watson wrote to his supervisor expressing a concern regarding his perception that his position as described and classified might be incompatible with what he was actually doing and that his assigned duties were keeping him busy only about 10 to 15 percent of the time. In response to Dr. Watson's concerns, the supervisor requested a classification audit of the position be conducted by the APHIS Field Personnel Services staff and that he be advised of appropriate management actions which might be taken based upon the findings of that audit. The audit was conducted by the servicing personnel office which, by memorandum of March 1, 1988, advised that Dr. Watson's position was not properly classified, noting Dr. Watson's claim he was occupied only 15 percent of the time.

Mr. Chairman, I would like to clarify my prepared statement on this point. The servicing personnel office concluded that Dr. Watson's position as written was correctly classified, but was not operating as designed.

Returning to my prepared statement, Mr. Chairman, it was recommended that the position be abolished. Such recommendation was followed, and Dr. Watson was notified by memorandum of May 1, 1988, that his position was abolished and he was offered reassignment to a Grain Marketing Specialist position—at the same grade level—in the Field Management Division, Washington, DC, effective June 19, 1988.

Dr. Watson submitted a May 13, 1988, letter from his physician to the effect that he should not undergo the stress of a job transfer due to medical reasons. Shortly thereafter, Dr. Watson submitted a May 17, 1988, memorandum requesting not to be reassigned because: First, he planned to retire between September 1988 and January 1990, and it would not be economical to move for such a short time; second, health reasons; and third, alleged staff shortage in Kansas City. He proposed he be assigned to other duties during the 1½ years until he retired, one of which suggestions was assignment to the Soybean Protein and Oil Implementation Project.

After proper verification of his medical condition, Dr. Watson was informed by the Deputy Administrator's October 26, 1988, letter that he would not be reassigned to Washington due to his health, but officially would remain in his current position and be detailed to the Soybean Protein and Oil Project for a period not to exceed 1 year.

By the Deputy Administrator's October 26, 1988, letter, Dr. Watson was "detailed" to the Soybean Protein and Oil Project for a period not to exceed 1 year.

Office of Personnel Management implementing regulations concerning details are set forth in Federal Personnel Manual Chapter 300, Subchapter 8, which indicates, in pertinent part:

A detail is the temporary assignment to a different position or set of duties. (There is no formal position change; the employee continues to hold the position from which detailed and keeps the same pay and status.)

Agencies may detail employees for any legitimate management purpose, for example, special projects.

Agencies may make and extend details in 120-day increments up to a maximum of 1 year.

Requests for extensions beyond the maximum time limits must be submitted to the Office of Personnel Management.

A new time limit applies each time an employee is detailed.

The effective date of Dr. Watson's detail was October 31, 1988. Dr. Watson initiated a grievance concerning the matter on January 23, 1989, continuing to complain of the classification of his official position and his assignment or detail to other duties. The grievance ultimately advanced to the USDA Office of Personnel which, upon review of the matter, found that Dr. Watson was properly detailed to other duties and that FGIS had not engaged in any harassment of Watson, had not abused its managerial discretion, and had not misused agency funds in detailing Watson. The Office of Personnel recommended that FGIS deny Dr. Watson's grievance, a recommendation which was adopted and implemented by this agency in its memorandum of August 23, 1989. Dr. Watson's detail was terminated October 7, 1989. Such detail was within the maximum timeframe of 1 year prescribed by the Federal Personnel Manual.

Subsequently, in July 1990, Dr. Watson was "assigned" to be the Project Manager of the Chemical Residue Research Program. Such assignment, even if considered a detail, is not in conflict with OPM guidance previously discussed as it is a new detail and a new time limit would apply. There is nothing in Federal personnel rules to prohibit separate, back-to-back details, each of which could be up to 1 year in length; the only prohibition is that any one detail may not exceed the 1-year limit without OPM approval.

From my review of the file, I find that Gail Jackson's certification of Dr. Watson's position descriptions covering those positions occupied by him are appropriate and in accordance with regulations.

Similarly, Dr. Watson has repeatedly expressed his opinion that he believes himself to be a more than satisfactory employee. Dr. Watson has contested past performance ratings, both formally and informally. Specifically:

Dr. Watson expressed written disagreement with his 1980 performance rating of satisfactory, expressing such disagreement in the form of a December 11, 1980, letter to his personnel record; he pursued no formal review procedure to contest the satisfactory rating.

Dr. Watson subsequently received an October 16, 1985, performance appraisal rating of satisfactory—or fully successful; or acceptable; which are synonymous terms. Dr. Watson disagreed with such rating, expressing his opinion that his performance rating should have been rated as "exceeds acceptable" to "outstanding." He grieved his satisfactory rating to USDA's Office of Personnel, which determined that Watson had been properly rated in his performance at the acceptable level.

On November 16, 1988, Dr. Watson received an appraisal rating of "fully successful" for his performance during the prior year. He disagreed with such rating, opining that he should be rated as "exceeds fully successful." He also grieved this satisfactory performance to USDA's Office of Personnel, which determined that Dr. Watson had not demonstrated that he deserved a higher performance rating and determined that his "fully successful" rating should not be changed.

As can be seen, Dr. Watson has never successfully demonstrated in proper forums that his work exceeds satisfactory or that his superiors incorrectly assigned him satisfactory ratings on his annual performance appraisals.

The issues raised by Dr. Watson before this committee are basically the same job assignment and performance evaluation issues he has repeatedly raised over the past several years. He now asserts that the issues have arisen due to his testimony in November 1987, an assertion denied by FGIS management. We, also, do not agree with Dr. Watson's assertion. Dr. Watson has been making complaints about such matters both before and after this testimony. In point of fact, he has always been, and is still, afforded full access to all applicable formal and informal administrative processes to air his personnel management concerns——

Senator BAUCUS. I am going to have to ask you, Mr. Robertson, to try to summarize. I apologize for not making this clear at the beginning of the hearing, but I understand my staff told each of the witnesses that we were asking for 7 minutes per witness. I believe that was communicated to all of you. If you could just keep it within that limit I would appreciate it.

Thank you very much.

Mr. ROBERTSON. Thank you.

Senator BAUCUS. If you've got a conclusion, go ahead and wrap up. I don't want to keep you from your conclusion.

Mr. ROBERTSON. It is very timely because I am right at the end. Dr. Watson has been making complaints about such matters both before and after this testimony. In point of fact, he has always been, and is still, afforded full access to all applicable formal and informal administrative processes to air his personnel management concerns and innumerable staff hours have been expended by FGIS, USDA's Office of Personnel, APHIS' Field Personnel Service, and my office in full, fair consideration of those concerns. The fact is that Dr. Watson has always been treated properly under, and in accord with, the Federal employment rules and policies and his right to submit complaints for review has been protected. That he has not been able to obtain that which he would prefer in no way indicates any impropriety on the part of the agency, nor does it in any way substantiate Dr. Watson's claim of harassment.

Thank you.

Senator BAUCUS. Thank you very much.

[The prepared material submitted by Mr. Robertson follows: Chronology on Cliff A. Watson, Federal Grain Inspection Service; letter from Jo Ann R. Smith, Assistant Secretary, Marketing and Inspection Services; and an analysis of Dr. C.A. Watson's allegation that the Federal Grain Inspection Service has retaliated against him for testimony given on November 10, 1987, at a joint hearing before the subcommittees of the House and Senate Agriculture Committees.]

(as of 9/11/90)

Chronology on Cliff A. Watson
Federal Grain Inspection Service (FGIS)

Performance Appraisal

10/80 - Watson disagreed with performance appraisal of satisfactory for rating period 2/2/79 to 2/1/80. He sent a letter for inclusion in his Official Personnel Folder, but did not file a grievance.

Meeting at Richards-Gebaur AF

3/6/84 - Homer Dunn, Acting Deputy Director, Field Management Division (FMD), wrote Watson concerning his early and unscheduled departure from a meeting on 10/25/83.

3/26/84 - Watson filed an informal grievance on the 3/6/84 memorandum above, requested that it be rescinded and all copies destroyed.

4/18/84 - Dunn responded to Watson's informal grievance; stated that the memo would stand. (The file has no further record of the grievance being elevated.)

Performance Elements and Standards

2/7/84 - Watson wrote John Marshall, Director, FMD, that his elements and standards for the period 10/1/83 to 9/30/84 were not reasonable, objective, nor quantitative.

3/8/84 - The performance elements and standards for all GM-14 managers in FMD were sent to the AMS Personnel Division for review and comment.

3/20/84 - Gary Whitaker, Acting Director, Office of Personnel (OP), wrote Dunn that the elements and standards looked suitable.

4/84 - Performance elements and standards were implemented. Elements and standards were the same for all GM-14 managers in FMD. Watson signed his performance elements and standards for the period 10/1/83 to 9/30/84, but stated he did not agree with them.

2/21/85 - Watson expressed, allegedly on behalf of GM-14 level managers in FMD, that the standards were too subjective, non-achievable, and non-uniform between all branch and area chiefs in FGIS.

Performance Appraisal Dispute

10/24/85 - Watson wrote David R. Galliart, Deputy Administrator, FGIS, stating he disagreed with his performance appraisal of 10/16/85, and grieved his rating through the Dispute Resolution Procedure. Watson was rated acceptable on 3 critical elements and 2 non-critical elements with an overall rating of 3.0. Watson believed his overall rating should be 4.6.

12/4/85 - David Galliart wrote Watson and concurred with the ratings given to Watson by his supervisors.

12/17/85 - Watson wrote Galliart stating he was not satisfied with the disposition and requested a review by a factfinder.

1/29/86 - Watson's grievance referred to the Office of Personnel (OP), USDA, for factfinding.

3/12/86 - Kenneth Gilles, Administrator, FGIS, wrote Watson and accepted the Factfinder's recommendation that Watson's overall performance was properly rated at the 3.0 level on each element.

Detail

2/86 - Watson was scheduled to be detailed to Washington, DC, from 2/10/86 to 3/6/86. Watson was verbally advised of this by Homer Dunn, Deputy Director, FMD, on 2/3/86. In a memorandum to Watson from Marshall dated 3/20/86, it gives the reasons for the detail as 1) Homer Dunn was to conduct a review of the QCTB protein period during this time; and 2) Watson could work on developing the protein monitoring instruction, revising his position description, and modifying his performance standards.

2/4/86 - Marshall and Watson met to discuss Watson's detail. Watson discussed his health problems, and Marshall agreed that Watson could furnish additional information on his health condition before a final decision would be made on the detail.

2/10/86 - Watson provided a note from his physician regarding his hypertension problem. Physician recommended no long trips until Watson's blood pressure was controlled. As a result, Watson was not detailed.

Review of the Quality Control and Testing Branch's (QCTB) Protein Program

2/3-7/86 - Homer Dunn, Deputy Director, FMD, conducted a review of the Quality Control and Testing Branch's (QCTB) protein program and submitted a trip report on 3/13/86 which identified weaknesses in the management of the QCTB.

Reassignment to New Position

8/17/87 - Watson was notified by memorandum from N. Gail Jackson, Director, Standardization Division, that effective this date he was reassigned into a new position as Assistant to the Director, Standardization Division.

1/8/88 - Watson wrote Jackson that the present position description (PD) and accompanying assignments were not compatible in that the position may classify as a GM-14 but the duties assigned were not at the 14 level.

1/26/88 - Jackson requested that the Animal and Plant Health Inspection Service (APHIS) Field Servicing Office (FSO) conduct a classification audit of Watson's position as Assistant to the Director.

2/26/88 - The audit findings revealed the PD was properly classified, but the actual duties and responsibilities being performed by Watson were not at the level projected in the PD.

Abolishment of Watson's Position

4/1/88 - Jackson requested abolishment of Watson's position as a result of the findings from the classification audit, and. requested that the Field Servicing Office assign Watson a grade 14 position within FGIS in accordance with Personnel Management guidelines.

5/1/88 - Watson given a letter explaining the result of the classification review and reassignment to a GM-14 Grain Marketing Specialist position, Office of the Director, FMD, Washington, DC, effective 6/19/88.

5/13/88 - Watson provided a note from his physician which stated it inadvisable for Watson to undergo the stress of job transfer.

5/17/88 - Watson wrote David Galliart, Deputy Administrator, and stated reasons against reassignment (medical and not in the best interest of the Agency to spend funds to transfer him since he had planned to retire late 1989).

5/26/88 - Galliart wrote Watson that the medical documentation submitted was insufficient in determining whether or not he was precluded from relocating in Washington, DC, and requested more specific medical information.

6/9/88 - Watson provided medical information.

6/23/88 - The medical information was further evaluated by the Department's physician who agreed with Watson's physician that relocation would likely have an adverse effect on Watson's blood pressure and heart condition.

10/26/88 - Galliart wrote Watson that, due to his medical condition, Watson would remain at the Technical Center in his present position as GM-14, Assistant to the Director, but would be detailed to the Soybean Protein and Oil project for a period not to exceed one year, effective 10/31/88.

Reconsideration of Performance Rating

11/16/88 - Watson was given a performance rating covering the period 10/1/87 to 9/30/88.

11/29/88 -Watson wrote Jackson and requested reconsideration of his performance rating under the Performance Management and Recognition System (PMRS) of which he was rated "fully successful" on three elements, and "does not meet fully successful" for one element, Personal Job Performance.

1/3/89 - Jackson responded to the grievance. He denied changing the "fully successful" ratings, but deleted the Personal Job Performance element.

2/11/89 - Watson filed a request for a final decision by the Administrator following factfinding.

7/31/89 - The Factfinder, Office of Personnel (OP), USDA, recommended that the fully successful ratings be retained.

8/4/89 - W. Kirk Miller, Administrator, FGIS, wrote Watson that he accepted the recommendation of the Factfinder.

Grievance of Current Position and Assignments

1/23/89 - Watson sent an informal grievance to Jackson relative to his position classification alleging that his position and assignments were not GS-14 level. He also alleged that his current position was not permanent, and alleged that "my current assignment is a continuation of a series of upper management decisions to continually harass me in an attempt to get me to retire at the earliest possible date."

2/17/89 - Jackson denied his grievance and advised Watson that his position as Assistant to the Director is a permanent position classified at the GM-14 level.

2/24/89 - Watson elevated his grievance to W. Kirk Miller, Administrator, FGIS, alleging his duties and responsibilities were not compatible with his position description.

4/12/89 - Miller responded to Watson's grievance and denied it. Miller accepted the recommendation that, since Watson was currently detailed away from his officially assigned position as Assistant to the Director, the duties associated with his officially assigned position were premature and speculative. It was recommended that once Watson was returned to his officially assigned position, he should pursue the matter at that time.

4/28/89 - Watson wrote Miller and requested further review of his grievance by a Factfinder, Office of Personnel, USDA.

8/23/89 - Miller wrote Watson that he accepted the recommendation of the Factfinder, OP, and denied the grievance because Watson had been officially detailed out of his position of record and his allegation was premature. He was advised that he could file a classification appeal with the Department concerning the duties and responsibilities of his position of record.

Factfinder, OP, USDA, stated in regard to Watson's allegations of harassment, "I do not find that the Agency was guilty of harassment, abused its discretion or misused Agency funds when it detailed the complainant."

Informal Grievance on Job Performance

7/27/89 - Jackson wrote Watson notifying Watson of unsatisfactory job performance on critical element #1, Personal Work Performance.

8/10/89 - Watson filed a grievance on this.

8/16/89 - Jackson responded to Watson's grievance, and denied it because apparently Watson had advanced an unapproved plan without permission. (There is no record of the grievance being elevated to the Administrator's level.)

Letter from U.S. Senate - Leahy and Harkin

2/20/89 - Patrick Leahy, Chairman, Committee on Agriculture, Nutrition and Forestry, and Tom Harkin, Chairman, Subcommittee on Nutrition and Investigations, wrote Jo Ann Smith, Assistant Secretary, Marketing and Inspection Service, USDA, concerning Watson. They requested:

* an update on Watson,
* review of Whistleblower cases within the agency, and
* information on training for supervisors within FGIS with regard to managerial responsibilities.

10/24/89 - Jo Ann Smith responded to the Senators' letters and sent copies of the Factfinding reports on Watson's two previous grievances. They were notified that, in regard to Watson's current job status, Watson's detail had expired and he was returned to his permanent officially assigned position in Kansas City as a GM-14 Assistant to the Director, Quality Assurance and Research Division.

Letter from Congress - Coleman and Marlenee

12/7/89 - E. Thomas Coleman and Ron Marlenee, Members of Congress, wrote Clayton K. Yeutter concerning the continuing complaints of Watson, and requested a full investigation of Watson's complaints.

2/1/90 - Smith wrote to Coleman and Marlenee that a representative would meet personally with Watson and attempt a mutually acceptable solution; they would be apprised of the outcome.

3/14/90 - Jane Simone and Donna Cozzens, Human Resources Division (HRD), met with Watson regarding resolution of longstanding grievances and exploration of options for resolution of his situation.

3/30/90 - Cozzens sent Watson a summary of the flip chart notes for comment or revision.

4/2/90 - Watson responded to Cozzens and made a few minor changes. Watson recommended the following solutions:

(1) a lateral transfer to the Deputy Director position;

(2) due compensation; and

(3) appropriate disciplinary action against Jackson and Galliart.

Watson's Assignment to Pesticide Research Project

7/12/90 - John Foltz, Administrator, FGIS, sent a memorandum to those involved in the Chemical Residue Testing (CRT) Project citing Watson as Project Manager.

7/18/90 - Meeting held in Kansas City to discuss the Chemical Residue Testing Research Project. In attendance were G. Jackson, L. Malone, J. Simone, S. Tanner, and Watson. At this meeting, a detailed discussion took place relative to the CRT Project and any concerns Watson had were addressed. Management assured Watson he would be provided the support he needed on the CRT Project.

7/24/90 - Watson wrote Foltz about concerns he had relative to the Chemical Residue Project: inadequate facilities, lack of well-qualified, trained personnel, not being a full-fledged member of a team, and justification of his GM-14 rating.

Letter from Senators Conrad and Baucus

7/13/90 - Letter sent to Jo Ann Smith from Kent Conrad and Max Baucus, U.S. Senators, on behalf of Watson. It stated that Watson had testified before Congress on 11/10/87 and subsequent changes in his employment conditions left the appearance that he had been subjected to retaliatory measures. A request was made to certify that Watson's claims had been thoroughly reviewed and his case justly resolved.

7/27/90 - Jo Ann Smith responded to the above Senators' letters. The letter stated that FGIS officials had met with Watson on 3/14/90 to discuss his continuing dissatisfaction with his position and explore options for the resolution of the situation; FGIS officials identified a Project Manager position of the Agency's new Chemical Residue Testing Research Project (a position which would make the best use of Dr. Watson's expertise); and FGIS officials met with Watson on 7/18/90 to discuss his new assignment and assured him in this meeting that they would provide the support he needed to successfully implement this project (see attached copy of this letter).

Letter from Senator Danforth

7/9/90 - Letter sent to Franklin Eugene Bailey, USDA Assistant Secretary for Governmental and Public Affairs, from John C. Danforth, U.S. Senator, on behalf of Watson.

8/29/90 - Response sent from Galliart stating that Watson had been assigned to manage the Chemical Residue Testing Research Project, and that the Agency had not taken any action against Watson in retaliation for his testimony before Congress in November, 1987.

Letter from Pat Williams, U.S. Congress

7/25/90 - Letter to Jo Ann Smith asking for assurance that Watson's charges have been satisfactorily addressed.

- Response sent from Jo Ann Smith stating that the Agency has not taken any action against Dr. Watson in retaliation for his testimony, and that his testimony did not have any negative impact on the Agency. Response states that the Agency is committed to the equitable treatment of all employees and to the letter and the spirit of the Whistleblower Protection Act.

USDA APHIS HRD

Jul [illegible] 1990

The Honorable Max Baucus
United States Senate
Washington, DC 20510

Dear Senator Baucus:

Thank you for your letter of July 13, 1990, on behalf of Dr. Clifford A. Watson concerning his position as Assistant to the Director of the Federal Grain Inspection Service's (FGIS) Quality Assurance and Research Division.

On March 14, 1990, FGIS officials met with Dr. Watson to discuss his continuing dissatisfaction with his position and explore options for the resolution of this situation. They have since identified the position of Project Manager of the Agency's new Chemical Residue Testing Research project as an additional assignment that would make the best use of Dr. Watson's expertise. The project is a high priority for the Agency. FGIS officials met with him on July 18, 1990, to discuss his new assignment and assured him that they would provide the support he needs to successfully implement this project.

We believe that we have addressed Dr. Watson's concerns about his assignments in his current position. If you have additional questions regarding this matter, please do not hesitate to contact us.

Sincerely,

/s/ Jo Ann R. Smith

Jo Ann R. Smith
Assistant Secretary
Marketing and Inspection Services

APHIS-HRD:CBillet-GRobertson:Baucus

Identical letter sent to: The Honorable Kent Conrad
United States Senate
Washington,DC 20510

The following constitutes an analysis of Dr. C. A. Watson's allegation that the Federal Grain Inspection Service has retaliated against him for testimony he gave at a Joint Hearing before the House Committee on Agriculture on November 10, 1987.

The analysis was prepared by the Human Resources Division, Animal and Plant Health Inspection Service. (The Division provides personnel management support to FGIS under a reimbursable agreement.)

WATSON JOINT HEARING TESTIMONY (November 10, 1987)

Watson called as part of the Management witness group which included Kirk Miller, Leroy Baker, Larry Zehm, Wilda Martinez, and Clarence McDonald. (Hearing Record p. 209.)

Watson's testimony essentially covered two points:

1. NIR Calibration - Watson testified that the NIR instruments, during the period of 1978-87, had been recalibrated only once, in 1982, instead of annually as required and in spite of Watson's several annual requests of "upper management" to do so. Watson attributed this lack of recalibration to the "feeling of the Agency" that calibration maintenance was the responsibility of the instrument manufacturer. (H.R. 219-20.) However, Watson spoke in defense of Kirk Miller, to the effect that Miller was not the Administrator at the time and was not responsible. (H.R. 219.) (Responsibility for the lack was attributed to "upper management" under the leadership of former Administrator Gilles.)

In his testimony, Miller acknowledged the calibration problem and explained actions which had already been initiated to resolve that problem. Indeed, in testimony given prior to Watson's, Wilda Martinez had specifically addressed those actions.

Watson's testimony, and the context in which it was given, was not revealing as it concerned the NIR calibration problem. It merely confirmed that which was acknowledged and addressed by Miller and Martinez. Further, Watson attributed the problem to the past Administrator and defended Miller as not being responsible. In summary, Watson told "no tales out of school" and placed no blame on the then current Administrator which could have resulted in hard feelings or retaliation on the part of Miller or the Agency.

2. April 15 0.2% NIR Bias Adjustment and May 4 0.2% Reference Sample Baseline Adjustment - In his testimony, Watson did not differ with the results achieved by the adjustments but rather only with the method of adjustment, particularly the May 4 baseline adjustment. In fact, at H.R. 226-8, Watson

goes to some effort to explain that the April 15 bias adjustment and the May 4 sample baseline adjustment were the one and same 0.2% lowering against the Kjeladahl. Watson expressed in his testimony no disagreement with the 0.2% downward NIR bias adjustment made on April 15 (other than to say it should have been on a location-by-location basis rather than across the board though he does not explain which locations should be included/excluded; H.R. p. 355). He did express disagreement that the May 4 reference samples baseline should not have been reduced from 13.89 to 13.69. (However, had this not been done to lower the baseline 0.2% to supplant the April 15 0.2% bias adjustment then the 0.2% bias adjustment would have had to continue after the May 4 initiation of the new reference samples. In either instance, as Watson testified, the net result would be the same, a 0.2% downward adjustment against the Kjeldahl.)

Watson's testimony revealed only that he differed with others within the Agency as to the method by which the 0.2% adjustment was to be accomplished but did not differ with the resulting 0.2% adjustment achieved. Further, he indicated he would have applied the 0.2% adjustment location-by-location rather than nationwide but he expressed no disagreement with the application of the 0.2% adjustment in the locales under examination. In short, Watson revealed nothing which was or could have been embarrassing to the Agency but was essentially in agreement with the ends (if not the means entirely) of actions taken by FGIS. Why the Agency would retaliate, as alleged, because of testimony essentially in agreement with the necessity and results of its actions are not clear.

Watson also offered some brief but inconclusive testimony regarding the issue of lack of written notification to substantiate the oral instruction on the June 15 0.1% correction of NIR readings. He first testified that such telephonic instruction is followed up with a note. (H.R. 222) However, at H.R. 223, he testified that "it is not unusual" to not give a written confirmation of oral instructions even if requested. But then he immediately testified that it would be unusual not to give a written confirmation. Watson did not seem sure whether or not written confirmation was required, or recommended, or even desirable in the particular instance. At any rate, Miller testified elsewhere that it was probably a poor management decision not to have given a written confirmation of oral instructions as it would have eliminated any confusion. As a consequence of such testimony, Watson stated nothing which was unfavorable to or critical of the Agency in this regard while the Administrator himself acknowledged a poor decision had been made. Watson's testimony in this regard would not, and could not, be the basis of any ill will toward him on the part of FGIS.

In consideration of the testimony given by Watson to the Joint Hearing on November 10, 1987, it is the position and assertion of FIGS that Watson offered nothing in his statements which was not already known, acknowledged and/or addressed by the Agency itself. The NIR calibration problem addressed by Watson was critical of the action, or lack of action, by "upper management" under a past Administrator but Watson rose in defense of his current Administrator who had already initiated action to address the problem. Regarding the 0.2% wheat protein adjustment, Watson did express some personal differences with some of the methodology of the adjustment but not with the necessity for or results of such adjustment in the geographic area in which it was applied. Finally, Watson was inconclusive in his opinion regarding appropriate means of notification and confirmation of instructions and expressed no judgment of the Agency action as did the Administrator. FGIS specifically denies that it has, or would, take any actions of harassment or retaliation against Mr. Watson, or any other employee, for proper testimony offered to members of the Senate and/or House of Representatives. Further, even assuming for the sake of argument that the Agency would harass or retaliate against an employee for offering proper testimony, we submit there is nothing in Dr. Watson's testimony which would give rise to such retribution. In short, the Agency denies that it has engaged in any action of harassment or retaliation against Dr. Watson because of his testimony and assert that nothing in Dr. Watson's testimony was of such nature as to give rise to such feelings on the part of this Agency or its managers.

Having specifically denied Dr. Watson's allegation of harassment by this Agency as well as the purported basis of the alleged harassment, we submit that Dr. Watson has been less than candid with the committee and is attempting to take advantage of your good offices in circumvention of proper administrative procedures established by law and regulation to address the employment problems of Federal employees. To demonstrate this, we shall address specific examples of allegations made by Dr. Watson, as follows:

1. In his September 21, 1990, letter to this Agency, Senator Baucus advised that Dr. Watson claimed, as a result of his testimony, he had been continually harassed, one of the alleged harassment techniques being that of "attempting to give him unsatisfactory performance ratings." This claim, in all candor, is simply erroneous. In the first place, Dr. Watson has had a continuing and repeated concern regarding his annual performance ratings, the history of which long pre-date his November 1987 testimony.

A. As indicated in the previously provided chronology, Dr. Watson expressed written disagreement with his 1980 performance rating of satisfactory, expressing such disagreement in the form of a December 11, 1980, letter to his personnel record; he pursued no formal review procedure to contest the satisfactory rating.

B. Dr. Watson subsequently received an October 16, 1985, performance appraisal rating of satisfactory (or fully successful; or acceptable; synonymous terms). Watson disagreed with such rating, expressing his opinion that his performance rating should have been rated as "exceeds acceptable" to "outstanding." He grieved his satisfactory rating to USDA's Office of Personnel which determined that Watson had been properly rated in his performance at the acceptable level.

C. On November 16, 1988, Dr. Watson received an appraisal rating of "fully successful" for his performance during the prior year. He disagreed with such rating, opining that he should be rated as "exceeds fully successful." He also grieved this satisfactory performance to USDA's Office of Personnel which determined that Dr. Watson had not demonstrated that he deserved a higher performance rating and determined that his "fully successful" rating should not be changed.

The above demonstrates that Dr. Watson, going back to 1980, has been dissatisfied with his various supervisors' determinations that he is a satisfactory employee. He obviously considers himself to he an excellent to outstanding one but has found no one who agrees with him and has been unable to demonstrate through the appropriate grievance procedure that his self-opinion should supersede the judgment of his supervisors. He now turns to this committee as a means of overriding the Agency's assessment of his performance.[6] In doing so, he has been somewhat disingenuous on two counts: (1) that his performance ratings subsequent to his November 1987 testimony differ from those prior; and (2) that he has been rated unsatisfactory as a result of his testimony. Obviously, neither intimation is true. Dr. Watson has been rated satisfactory on his annual performance ratings both before and after his testimony. He has obviously been dissatisfied with such ratings but the fact that he considers himself to be an outstanding employee and finds his satisfactory ratings to be personally unsatisfactory is not critical to this committee's considerations.

2. Another of the "alleged harassment techniques" cited by Senator Baucus based on Dr. Watson's claims was that of "abolishing his position in Kansas City and attempting to transfer him to Washington, D.C." This claim, too, reveals less than full candor on the part of Dr. Watson as we shall explain.

On August 17, 1987, Dr. Watson was notified by his supervisor (Gail Jackson, Director, Standardization Division) that he was being reassigned that date into the new position of Assistant to the Director from his position of Chief, Quality Control Branch. Subsequently, on January 8, 1988, Dr. Watson wrote to his supervisor expressing a concern regarding his perception that his position as described and classified might be incompatible with what he was actually doing and that his assigned duties were keeping him busy only about 10-15% of the time. In response to Watson's concerns, the supervisor requested a classification audit of the position be conducted by APHIS Field Personnel Services staff and that he be advised of appropriate management actions which might be taken based upon the findings of that audit. The audit was conducted by the servicing personnel office which, by memorandum of March 1, 1988, advised that Dr. Watson's position was not properly classified, noting Dr. Watson's claim he was occupied only 15% of the time, and recommended the position be abolished. Such recommendation was followed and Dr. Watson was notified by memorandum of May 1, 1988, that his position was abolished and he was offered reassignment to a Grain Marketing Specialist position (at the same grade level) in the Field Management Division, Washington, D.C., effective June 19, 1988.

Dr. Watson submitted a May 13, 1988, letter from his physician to the effect that he should not undergo the stress of a job transfer due to medical reasons. Shortly thereafter, Dr. Watson submitted a May 17, 1988, memorandum requesting not to be reassigned because: (1) he planned to retire between September 1988 and January 1990 (and it would not be economical to move for such a short time); (2) health reasons; and (3) alleged staff shortage in Kansas City. He proposed he be assigned other duties during the 1 1/2 years until he retired, one of which suggestions was assignment to the soybean protein and oil implementation plan.

After proper verification of his medical condition, Dr. Watson was informed by the Deputy Administrator's October 26, 1988, letter that he would not be reassigned to Washington due to his health but officially would remain in his current position and be detailed to the Soybean Protein and Oil Project for a period not to exceed 1 year.

The above synoposis of events clearly indicate several things. First, Dr. Watson was assigned to his current official position prior to his November 1987 allegedly unfavorable testimony. Secondly, it was Dr. Watson himself who raised concerns about his position and about not having enough to do. Third, the supervisor properly sought advice and assistance from the personnel management support staff which recommended the abolishment of Dr. Watson's position. Fourth, FGIS, acting on the APHIS servicing personnel staff advice, initiated action to abolish Dr. Watson's position and offer him a like position in Washington, D.C. Dr. Watson declined the reassignment offer due to health reasons, upcoming retirement, and ability to perform duties in Kansas City. Dr. Watson's health situation was duly accommodated by the Agency, he was allowed to remain in Kansas City, and was detailed to perform duties, as he had suggested, in the Soybean Protein and Oil Project. As of this date, Dr. Watson has not retired as he indicated he would; however, the Agency has continued to accommodate him by allowing him to remain in his position and assigning to him other duties needing to be performed. It is hard to conceive how this set of facts could be perceived as a "harassment" technique based on testimony when the Agency has acted properly, even compassionately, in this circumstance.

Be that as it may, Dr. Watson initiated a grievance concerning the matter on January 23, 1989, continuing to complain of the classification of his official position and his assignment/detail to other duties. The grievance ultimately advanced to the USDA Office of Personnel which, upon review of the matter, found that Dr. Watson was properly detailed to other duties and that FGIS had not engaged in any harassment of Watson, had not abused its managerial discretion , and had not misused Agency funds in detailing Watson. The Office of Personnel recommended that FGIS deny Dr. Watson's grievance, a recommendation which was adopted and implemented by this Agency in its memorandum of August 23, 1989. Once again dissatisfied with the results of proper administrative actions on the part of this Agency, Dr. Watson submitted the matter to this committee, claiming harassment due to his testimony, in the apparent hope that the committee will override the management decisions of this Agency and he can obtain what is personally satisfactory to him. We submit that Dr. Watson's claims in this regard are not only without basis but his is an abuse of the good offices of this committee and a denigration of proper administrative appeal and grievance procedures established by law and regulation for the consideration of employee concerns and complaints.

We could continue this rather detailed litany of facts in rebuttal to Dr. Watson's claimed "harassment techniques" identified in Senator Baucus' September 21, letter. However, we do not wish to take undue time of the committee or overburden its record. As a consequence, we shall only briefly address a couple of more items before concluding this statement.

- One "alleged harassment technique" claimed by Dr. Watson is that of giving him inadequate work assignments. Without further clarification, it is not clear as to what he is specifically alluding to and why he perceives this to be the case. At any rate, it is not a perception shared by this Agency. We alluded above to the fact that Dr. Watson was detailed and assigned, partially based upon his own suggestion, to the Soybean Protein and Oil Project during the period of October 1988 to October 1989. Certainly we do not think that Project and its completion was unimportant or "an inadequate work assignment." Indeed, upon completion of the Soybean Protein and Oil Project in the Fall 1989 (a year ahead of its originally scheduled completion date), the Agency bestowed awards upon various individuals who worked on the Project. Dr. Watson himself was given a $250 cash award for his role in "planning and/or executing of a soybean protein and oil testing program." If Dr. Watson views this program as an inadequate work assignment, so be it; FGIS and, we daresay, soybean processors do not share that view.

- Another "alleged harassment technique" claimed by Dr. Watson is that of "assigning him to a project for which he is not qualified." Apparently, we are more confident of Dr. Watson's qualifications than is he. Be that as it may, by memorandum of July 17, 1990, Dr. Watson was assigned to be the Project Manager for FGIS' Chemical Residue Research Project, the purpose of which project is to develop chemical residue testing of whole grain to facilitate the marketing of grain in domestic and foreign channels and to avoid potential market disruptions for U.S. grain caused by unsafe levels of chemical residue. We regard this Project as very important both to grain producers and consumers. Dr. Watson was assigned to the project in the belief that his education and experience was of such nature and quality that he could effectively perform as Project Manager to oversee and guide it to completion. In addition to information provided in the written assignment, a meeting was conducted on July 18, 1990, among concerned individuals, including Dr. Watson, to discuss Project results, methods and timeframes; equipment, facilities and supplies; duties and responsibilities; necessary preparatory training for assigned personnel, etc. Dr. Watson voiced the opinion during the meeting that he may not have adequate training/education to be Project Leader but was assured he would be provided any necessary training. He also indicated he planned to retire in January 1991 and the project might come to a standstill if he did; he was assured he had the qualifications to be the Project Manager, his expressed plans to retire had changed before, and other people would also be trained. In short, we believe Dr. Watson is qualified to be the Project Manager of the research project. To the extent that he as Project Manager can identify training needs for himself or other project personnel, he has been assured that such training will be provided; that is, after all, part of his responsibility as the Project Manager. We do not know why Dr. Watson would feel himself, given his academic background and work experience, unqualified for the position but this Agency is confident that he is fully qualified to manage the project. If we did not believe he was qualified to be the Project Manager and capable of leading it to successful results, we certainly would not jeopardize the success of the project or its benefits to producers and consumers by assigning Dr. Watson to the project in the expectation that he could not accomplish the task.

In conclusion, we specifically and emphatically state that we have not, and would not, engage in harassment of any employee because such employee offered proper testimony in any authoritative forum. We categorically deny any harassment of Dr. Watson because of testimony offered to the Joint Hearing on November 10, 1987. Indeed, as explained above, there was nothing in Dr. Watson's testimony which was not otherwise known, addressed, or acknowledged by the Agency; his testimony could cause no feelings for retribution or retaliation upon the part of FGIS "upper management," even assuming they were otherwise inclined to such feelings. Further, the "alleged harassment techniques" claimed by Dr. Watson do not stand up to examination. His performance ratings were the same satisfactory level both before and after his testimony; the fact that he does not agree with any of the ratings does not mean the ratings were improper or the products of harassment. His proposed reassignment, which never occurred in personal accommodation to Dr. Watson, was the result of the position classification/organizational structure concerns (first raised by Watson) not because of any act of harassment. Dr. Watson may also disagree with the adequacy of a particular project work assignment but that does not lessen the importance or validity of a project such as the Soybean Protein and Oil Project. Finally, Dr. Watson apparently believes himself less qualified to manage a research project than this Agency believes him to be; how this difference of opinion constitutes harassment, particularly when the Agency has committed itself to filling any qualification gaps, is not clear. Dr. Watson constructs an argument that because he gave testimony and management determinations with which he disagrees occurred subsequently, the management determinations were made to cause his dissatisfaction because of his testimony. As a scientist, Dr. Watson should know that simply because B follows A does not mean A caused B particularly where A is not even a catalyst. As previously discussed, there was nothing in Dr. Watson's testimony which could have, or did, trigger any retaliatory action. Events occurring subsequently with which Dr. Watson disagrees stand on their own merits as appropriate management actions. In point of fact, Dr. Watson has suffered no action by management which has been in any way adverse to his grade level, his pay, his relative standing in the organization, his rights, or his benefits as an employee. In our opinion, to suggest otherwise does not meet the test of objective consideration.

Senator BAUCUS. Mr. Jackson.

STATEMENT OF N. GAIL JACKSON, DIRECTOR, QUALITY ASSURANCE AND RESEARCH DIVISION, FEDERAL GRAIN INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE TECHNICAL CENTER, KANSAS CITY, MO

Mr. JACKSON. Thank you, Senator.

My name is Gail Jackson and I am currently Director of the Quality Assurance and Research Division in Kansas City, Missouri.

For the purpose of this testimony, I will summarize the items conveyed to me in your letter of September 21, 1990, and submit my written statement for the record.

REASSIGNMENT

On reassignment of Dr. Watson from Chief, Quality Control Branch (QCB) to Assistant to the Director, Standardization Division.

During July 26-30, 1987, I was in Washington, DC, attending the agency's quarterly work plan review. After one of the sessions, a brief meeting was held regarding the protein program. The Administrator felt the new leadership was needed in the Quality Control Branch to restore confidence in the program. He felt that someone stronger in problem detection and problem solving would have identified the problem within the agency data.

Upon my return to Kansas City, I was instructed by Mr. Miller to reassign Dr. Watson from Quality Control Branch Chief to an Assistant to the Director position.

DR. WATSON'S TESTIMONY

On Dr. Watson's testimony. On November 10, 1987, Dr. Watson gave oral testimony at a joint hearing before Congress on the Hard Red Spring wheat protein problem. In my opinion, Dr. Watson communicated poorly at the hearing. Also, his testimony showed that he had conveyed to the field that the lowering of the April 15, 1987, baseline values was in error. Therefore, he failed to support the agency's policy decision. Upon my return to Kansas City, I met with Dr. Watson to discuss his testimony. I told him that his testimony was confusing and that he did not directly answer the questions; his statements were sometimes incomplete, and his testimony showed that he did not support agency policy decision. Further, I told him that such confusing and unclear testimony was the type that could end people's careers, and that Kirk Miller's, mine, and his career with the agency were probably over. In my opinion, it was Dr. Watson's comment to Al Williams of the State of Montana Inspection Office that led to considerable confusion in the field, the joint hearing, and the General Accounting Office's investigation.

Before I leave this issue, I want to make clear for the record that at no time did I ever tell Dr. Watson that he should not truthfully reply to the questions during his testimony.

ABOLISHMENT OF POSITION

On abolishment of position. On January 8, 1988, Dr. Watson wrote me a memo expressing his opinion that the duties assigned to him did not support his grade level. He listed four possible resolutions, none of which were acceptable.

Because Dr. Watson had raised the question regarding the classification of his position, I believed that a review or desk audit was needed to determine at what level the position would classify. The desk audit recommended that the position be abolished.

On May 1, 1988, Mr. Galliart responded with a letter to Dr. Watson notifying him that his position was being abolished as a result of the audit and reassigning him to a position in Washington, DC.

On May 17, 1988, Dr. Watson wrote a memo as to why he should not be reassigned. His reasons were that he would retire by the end of 1989, health reasons, and professional staff shortage at the Technical Center. Further, he furnished medical documentation regarding his health.

On October 26, 1988, Deputy Administrator Dave Galliart responded, acknowledging that Dr. Watson was unable to accept reassignment due to his medical condition and detailing him for 1 year to coordinate the Soybean and Protein Oil Project.

On January 23, 1989, Dr. Watson filed an informal grievance regarding his current position and assignments. Dr. Watson requested assignment to a permanent GS–14 position in Kansas City and alleged that since he was not assigned in a full-time position, he was being harassed.

On February 17, 1987, I responded to Dr. Watson stating the full-time Assistant to the Director position would be retained and that the agency would continue to accommodate him in that position.

On February 24, 1989, Dr. Watson pursued the formal grievance route with a letter to the Administrator.

On April 12, 1989, the Administrator responded to the grievance. No evidence of harassment to coerce him into early retirement was found and the grievance was denied.

UNDERUTILIZATION

On underutilization. Dr. Watson has periodically complained that he is underutilized regarding assignments which are commensurate with his grade level and skills. Upon receiving these complaints, I gave him additional assignments, all of which were covered by his job description. These duties were assigned in addition to his routine duties.

Within Dr. Watson's job description, he has considerable latitude to be fully occupied, but he continually requests specific assignments from me instead of working independently.

Recently, Dr. Watson was given two more assignments. One was the determination of chemical residues in grain, and another one was evaluation of procurement of quantitative aflatoxin test kits.

Dr. Watson just recently informed me that he would not be able to work on the Chemical Residue Project because he will be fully occupied until the end of the calendar year on the aflatoxin project.

PERFORMANCE RATING, FISCAL YEAR 1988

On performance rating, fiscal year 1988. Under our performance appraisal plan, there are three categories in which to rate an employee. They are: First, exceeds fully successful; second, fully successful; and third, does not meet. Mr. John Halverson, my Deputy, now deceased, was Dr. Watson's rating official.

Dr. Watson's performance standards contained five elements on which he was rated. On the initial rating, Dr. Watson received a "does not meet" on element No. 5, noncritical, personal job performance.

On the remaining four elements he received one "exceeds fully successful" and three "fully successful" ratings, an overall rating of "fully successful."

On November 29, 1988, Dr. Watson requested that I as the reviewing official reconsider his rating. Dr. Watson requested that he be given "exceeds fully successful" under all five elements. This would equate to a perfect score and an outstanding overall rating.

To provide some relief for Dr. Watson because of the technicality, and not all of the documentation was as strong as I preferred, I eliminated the current rating on performance element 5. Therefore, he received one "exceeds fully successful" and three "fully successful" ratings for that period.

On April 20, 1989, Dr. Watson appealed the rating I gave him to the USDA Office of Personnel. On July 31, 1989, a decision was made, and the rating I gave him was sustained.

Mr. Chairman, that concludes my oral testimony.

Senator BAUCUS. Thank you.

[The prepared statement and attachments I and II of Mr. Jackson follow:]

Statement of N. Gail Jackson, Director
Quality Assurance and Research Division
Presented October 4, 1990, at the
Senate Committee on Agriculture
Washington, D. C.

INTRODUCTION:

My name is N. Gail Jackson and I am currently Director of the Quality Assurance and Research Division (formerly Standardization Division) in Kansas City, Missouri. I have been in this position since October 4, 1981. I have been Dr. Watson's supervisor since June 27, 1989. Prior to that time, Dr. Watson's immediate supervisor was Mr. John Halverson, my Deputy, who unexpectedly passed away on June 26, 1989.

For the purpose of this testimony, I will summarize the items conveyed to me in your letter of September 21, 1990, and submit my written statement for the record.

REASSIGNMENT OF DR. WATSON FROM CHIEF, QUALITY CONTROL BRANCH (QCB) TO ASSISTANT TO THE DIRECTOR, STANDARDIZATION DIVISION

My recollection of the reassignment is as follows:

During July 26-30, 1987, I was in Washington, D. C., attending the Agency's quarterly work plan review. After one of the sessions, a brief meeting was held regarding the protein program. The previous FGIS Administrator Kirk Miller was present, and I believe that the Deputy Administrator David R. Galliart and Field Management Director John Marshall were present. While the necessary corrections to the protein program had been implemented, there was still considerable confusion and uneasiness in the field. The Administrator felt that new leadership was needed in the Quality Control Branch to restore confidence in the program. He felt that someone stronger in problem detection and problem solving would have identified the problem within the Agency data. The problem appeared to have been in existence for about eight months without detection. Mr. Miller was concerned that foreign complaints were the first notification of the problem and that it took additional time, resources, and a special study to confirm that the complaints were valid.

The lack of confidence in Dr. Watson was later born out in the written testimony of Mr. William Brookreson, Grain Inspection Manager of the Grain and Commodity Inspection Service, State of Washington, before the Joint Hearing on November 10, 1987. In his testimony, Mr. Brookreson cited some significant strides taken toward addressing and resolving long-standing problems with the protein program. One of the items he listed was, "We have made no secret that, in the past, we have been very dissatisfied with leadership at QCB. A change has been made there, also. In the last few months we have seen a new chemist, Ron Bicsak, who has experience in the trade and a number of other new staff. A new Branch Chief is currently being sought." QCB is Quality Control Branch and Dr. Watson was the person with whom Mr. Brookreson expressed dissatisfaction.

Upon my return to Kansas City, I was instructed by Mr. Miller to reassign Dr. Watson from QCB Chief to an Assistant to the Director position for the good of the Agency. On July 31, 1987, I carried out this order by verbally informing Dr. Watson. This action was confirmed in writing on August 17, 1987. The reassignment was not an adverse action against Dr. Watson.

DR. WATSON'S TESTIMONY

On November 10, 1987, Dr. Watson gave oral testimony at a Joint Hearing before Congress on the Hard Red Spring wheat protein problem. In my opinion, Dr. Watson communicated poorly at the Hearing. Also, his testimony showed that he had conveyed to the field that lowering the April 15, 1987, baseline values was an error. Therefore, he failed to support the Agency's policy decision. Upon our return to Kansas City, I met with Dr. Watson to discuss his testimony. I asked him how he thought it went. He said "Oh, fine, fine." I told him that I disagreed. He asked what I meant. I told him that his testimony was confusing in that he did not directly answer the questions, his statements were sometimes incomplete, and his own testimony showed that he was not supporting Agency policy decision. Further, I told him that such confusing and unclear testimony was the type that could end people's careers and that Kirk Miller's, mine, and his career with the Agency were probably over. Dr. Watson stated that it was not easy to testify under those conditions and that he was not going to perjure himself. I told him that no one wanted him to lie or perjure himself, but that he should have answered the questions in a more direct manner and should have supported Agency policy decision and not conveyed to the Montana Inspection Agency that the April 15, 1987, bias change was an "error." In my opinion, it was Dr. Watson's comment to Mr. Al Williams that led to considerable confusion in the field, the Joint Hearings, and the General Accounting Office's (GAO) investigation. Dr. Watson has steadfastly denied that he conveyed to Mr. Williams of the Montana Department of Agriculture that the bias change was an "error" and that he failed to support that policy decision.

Upon receipt of the transcript testimony (Attachment 1), Dr. Watson supplied me with a copy so I could assist him with the editing. I spent considerable time assisting Dr. Watson in editing his statements so that the reader could understand what he was trying to convey. The handwriting is that of Dr. Watson's and mine. I think Page 128, lines 2 through 13, support my point about his testimony not being clear. I would like to read these few lines to convey to you my concern about Dr. Watson's testimony. Dr. Watson was commenting on the protein base lines of the two Standard Reference sample sets and the effect of stating the protein content upon a 12 percent moisture basis.

> Dr. Watson. "Because on May 4th, we established a new baseline that was unrelated to the baseline that was previously used. In other words, you are looking at a different set of samples and must divorce yourself from the previous set of samples that you were using. We were using an entirely new set of samples an entirely new baseline and we established a baseline then of 13.89.
>
> In regards to the moisture that only affects not the amount of protein there, but the apparent amount that you might wish to--that you think you have. In other words, you approach everything on a constant moisture basis, and it increases the marketability of your system."

Mr. Chairman, I think this example supports my statement to Dr. Watson that his testimony was unclear. There are others within the unedited transcript attached for the record.

Dr. Watson has denied that he conveyed to the field that lowering the April 15, 1987, baseline of the Standard Reference samples was an error. He has claimed that Mr. Bicsak made all of the calls to the field. My review of the Hearing transcript clearly shows that Dr. Watson conveyed to the field that lowering the April 15 baseline was an error. The following is a quotation from the testimony (Page 49) of Mr. Rex Denning, Chief Grain Inspector, Grain Standards Bureau, Montana Department of Agriculture.

> "Dr. Watson informed Mr. Williams that this error was made while he was on vacation."

For additional verification, please refer to Pages 80, 85, and 229 of Attachment II copied from the complete testimony record.

Before I leave this issue, I want to make clear for the record that at no time did I ever tell Dr. Watson that he should not truthfully reply to questions during his testimony. My discussion with him was in regard to unclear and confusing testimony and failure to support the April 15, 1987, lowering of the Standard Reference baseline values. Mr. Holt, President of the Montana Grain Growers Association, supported lowering the April 15, 1987, baseline of the Standard Reference samples. I think perhaps almost everyone did, except Dr. Watson. At the time the policy decision was made, Dr. Watson had not made a recommendation. He advocated getting additional data which would have taken more time, something our foreign customers would not have tolerated. Dr. Watson's comment to Mr. Williams that lowering the baseline was an error was made after the April 15 baseline was in effect. This comment contributed to confusion in the field.

ABOLISHMENT OF POSITION

As previously stated in my testimony, Dr. Watson was reassigned from Chief of the Quality Control Branch to his current position as Assistant to the Director on August 17, 1987. On January 8, 1988, Dr. Watson wrote me a memo expressing his opinion that the duties assigned to him did not support his grade level. He listed four possibilities for resolution, none of which were acceptable, i.e.

-- Create another Deputy position which would have been two Deputies to oversee two Branch Chiefs and their Branches,

-- Retire Mr. Halverson (my Deputy at that time) on medical disability and assign him (Dr. Watson) to the position,

-- Reassign him back to the Quality Control Branch Chief position, or

-- He had heard a rumor that I was seeking an early out and he wanted to be Director or Deputy Director if Mr. Halverson were promoted.

Because Dr. Watson had raised the question regarding the classification of his position, I believed that a review of the position was needed to determine at what level the position would classify. A report of the desk audit was issued on March 1, 1988. The results stated that the position, as it was functioning, was not properly classified at the GM-14 level. The incumbent was not performing a full range or enough of those duties to support the GM-14 level. The desk audit recommended that the position be abolished. On April 1, 1988, I initiated the paperwork to abolish the position in accordance with the recommendation of the desk audit.

On May 1, 1988, Mr. David Galliart responded with a letter to Dr. Watson notifying him that his position was being abolished as a result of the audit and reassigning him to a position in Washington, D. C., that would support his current GM-14 grade level.

On May 17, 1988, Dr. Watson wrote a memo as to why he should not be reassigned. His reasons were that he would retire by the end of 1989, health reasons, and professional staff shortage at the Technical Center. Dr. Watson listed five activities which would occupy his time for the next one and one-half years until he retired. Further, he furnished medical documentation regarding his health.

On October 26, 1988, Deputy Administrator David Galliart responded acknowledging that Dr. Watson was unable to accept reassignment due to his medical condition and detailing him for one year to coordinate the Soybean Protein and Oil project. The project was to be implemented by the end of that year. The Agency went out of its way to accommodate Dr. Watson so he could remain in Kansas City and retain his current GM-14 grade level.

On January 23, 1989, Dr. Watson filed an informal grievance regarding his current position and assignments. Dr. Watson requested assignment to a permanent GM-14 position in Kansas City and alleged that since he was not assigned in a permanent full-time position he was being harassed.

On February 17, 1989, I responded to Dr. Watson stating the full-time Assistant to the Director position would be retained and that the Agency would continue to accommodate him in that position. I further stated that I found his allegation of harassment by management unfounded. The reference to "retirement" in the May 1, 1988, letter to abolish his position was standard language contained in all such letters.

On February 24, 1989, Dr. Watson pursued the formal grievance route with a letter to the Administrator.

On April 12, 1989, the Administrator responded to the grievance after receiving a review which was conducted by our servicing Performance, Conduct, and Labor Relations Division of the Animal Plant Health Inspection Service (APHIS). No evidence of harassment to coerce him into early retirement was found and the grievance was denied.

In summation for the record I would like to point out that the Agency did not initiate on its own the action to abolish Dr. Watson's position. It only resulted after Dr. Watson's memo was received questioning the classification of the position. When Dr. Watson was facing reassignment to Washington, he quickly identified some tasks that would occupy his time. At that time, he did not question whether or not these tasks would classify at the GM-14 level. My point is that we have made reasonable accommodations for Dr. Watson.

UNDER UTILIZATION

Dr. Watson has periodically complained that he is under-utilized regarding assignments which are commensurate with his grade level and skills. Upon receiving these complaints, I gave him additional assignments, all of which are covered by his job description.

On September 28, 1989, he was given the following literature search assignments:

1. Measurement of chlorophyll in Canola and soybeans.
2. Measurement of free fatty acids in soybeans.
3. Measurement of erucic acid in Canola.
4. Measurement of condensed tannins in sorghum.
5. Effect of moldy grain and olfaction on livestock and poultry palatability.

Per my request of May 18, 1990, Dr. Watson was to investigate a procedure to measure free fatty acids in soybeans.

The duties were assigned in addition to routine duties (e.g., meetings, foreign trade team visits, Management Development Program [MDP] training, reports, internal management reviews, and other short-term assignments).

Within Dr. Watson's job description he has considerable latitude to be fully occupied, but he continually requests specific assignments from me instead of working independently. For example, a major duty and responsibility of his job description contains the wording "Identifies and monitors technological advances relating to grain quality testing and advises the Director of possible application in the inspection process." To date, Dr. Watson has only reported on items assigned by me. The Chief of Research and Development Branch has identified 222 papers that might have some Federal Grain Inspection Service (FGIS) application. These papers were identified between July 15 and August 1, 1990. Dr. Watson has shown little initiative for working independently.

Recently Dr. Watson was given two more assignments:

-- Determination of Chemical Residues in Grain, and

-- Evaluation of Procurement of Quantitative Aflatoxin Test Kits for Corn, Corn Meal, Corn Gluten Feed, Corn Germ Meal, Corn/Soy Blend, Soybeans, Sorghum, Milled Rice, and Wheat.

The Chemical Residue Analysis assignment was made November 3, 1989, --almost nine months ago. Dr. Watson has made little progress on the project. One of the reasons was legitimate. Our present fume hoods were not suitable for extraction of residues. Dr. Watson has voiced that he was pressured to work under unsafe conditions, which is not true. Dr. Watson voiced his concern about the safety of our present fume hoods for extraction of samples. I decided that if the safety of the fume hoods was questionable we should consult with an Industrial Hygienist. I personally told Dr. Watson that no one was going to force him or any employee to work under unsafe conditions. The report arrived from the Industrial Hygienist (February 15, 1990). The report confirmed Dr. Watson's opinion and the fume hoods are being modified.

Dr. Watson has been encouraged to schedule training for himself since the very start of the project. Dr. Watson delayed his training, giving excuses such as:

-- Wait until the equipment is calibrated.
-- Waste of time and money because of his plans to retire.
-- Does not know the level of training needed.

During this same time frame, he claimed harassment because he is not qualified to manage the project. However, I believe that he can manage the project with adequate supplemental training, which we are willing to provide. Recently Dr. Watson identified three courses with an instrument manufacturer which he felt were needed. His attendance at all three was approved. His requests for training in all cases have been approved.

Dr. Watson just recently informed me that he will not be able to work on the Chemical Residue Project because he will be fully occupied until the end of this calendar year on the aflatoxin project.

I hope this adequately addresses the under-utilization concerns.

PERFORMANCE RATING, FISCAL YEAR 1988:

Under our Performance Appraisal plan, there are three categories in which to rate an employee. They are: (1) exceeds fully successful, (2) fully successful, and (3) does not meet. A rating of "exceeds fully successful" or "does not meet" requires written justification. Mr. John Halverson, my Deputy (now deceased), was Dr. Watson's "Rating Official." I was the next step in the clearing process as "Reviewing Official."

Dr. Watson's performance standards contained five elements on which he was rated. On the initial rating, Dr. Watson received a "does not meet" on Element No. 5 (non-critical), Personal Job Performance. Reasons given were:

1. Prolonged opposition to management in resolving the content of internal reviews.

2. Testimony regarding disagreement with Agency policy was communicated outside the Agency.

3. Opposition to management plan and resulting cause for removal from remodeling project.

On the remaining four elements he received one "exceeds fully successful" and three "fully successful" ratings.

On November 29, 1988, Dr. Watson requested that I as the Reviewing Official reconsider his rating. Dr. Watson requested that he be given "exceeds fully successful" under all five elements. This would equate to a perfect score on a test — an outstanding overall rating.

In Dr. Watson's November 29, 1988, memo to me requesting a review of his rating, I found his comment regarding his testimony quite revealing. It follows for the record:

> "SENATE TESTIMONY. The statement by Mr. Halverson that testimony I gave, or was provided by others, indicated that I communicated disagreements with Agency policy outside the Agency should be dealt with by upper management in severe disciplinary action against Mr. Halverson and any others condoning such statement. Testimony was provided by all parties at the request of the Senate Committee on Agriculture and its counterpart in the House. We were admonished to give true and direct statements. At no time was testimony provided that I communicated my disagreement with an Agency decision outside the Agency. The statement by Mr. Halverson is unwarranted and is tarnished with the symptom of the "adverse action and harassment" syndrome connected with whistle blowers. This should be stopped and deplored by upper management instead of encouraged. Obviously this is an attempt to intimidate employees from providing adverse testimony. Further, the testimony was given several months in advance of when the Performance Elements and Standards were in effect (date signed). Therefore, the testimony should not even have been brought up as a rating factor."

Dr. Watson denies communicating to the field that he said the lowering of the April 15, 1987, baseline was an error. Yet, the testimony clearly shows that he conveyed this information to Mr. Al Williams in Montana. Dr. Watson lashed out against Mr. Halverson with a statement of "adverse action and harassment" syndrome connected with whistle blowers. Dr. Watson chose to disregard the fact that his "does not meet" rating was based on failure to follow Agency policy decisions. He was not admonished for telling the truth. He utilizes claims of "whistle blower-harassment" whenever he is counseled.

To provide some relief to Dr. Watson and because not all of the documentation was as strong as I would prefer, I eliminated the element from his current rating. Therefore, he received one "exceeds fully successful" and three "fully successful" ratings.

You may ask why I deleted the "does not meet" rating. It was not because he did not violate it; it was because of a technicality. The violation occurred during the previous rating year and was not known until the new rating year had started.

On April 20, 1989, Dr. Watson appealed the rating I gave him to the USDA, Office of Personnel. On July 31, 1989, a decision of the appeal was given. The rating I gave Dr. Watson was sustained.

In summary of this item, I believe that the system is set up to handle disagreements over performance ratings. In Dr. Watson's case, it was utilized to the fullest extent. The end result was a fair rating.

Mr. Chairman, this concludes my testimony. I will be glad to address any questions you might have.

N. Gail Jackson, Director
Quality Assurance and Research Division

namely 0.2 percent.

Given the fact that certain components of the industry attach economic significance to values as low as 0.1 percent protein, the team considers it to be essential to identify and eliminate all aspects of this technology that might contribute to the introduction of systematic errors, that is, errors which produce values all higher or all lower than true values, and to assure that the residual error inherent in any analytical system is truly random.

The team also recognizes that the scope of the current system for protein determination in wheat is of a scale and diversity that is unique in the experience of this technology and, consequently, may require monitoring procedures not previously recognized as essential in system of lesser magnitude.

Thank you, Mr. Chairman.

Senator Melcher. Thank you, Dr. Martinez.

Mr. Miller, why wasn't the Near-Infrared equipment recalibrated every year?

Mr. Miller. Sir, I really don't know the answer to your question. I would have to defer to some of the career people who have been here during that time period, and maybe they can offer you--let me ask Dr. Watson who was in charge of that program, and maybe he has an opinion.

Senator Melcher. Do you have an answer, Dr. Watson?

Dr. Watson. The instruments were not recalibrated for that period of time because it was not the policy of the Federal Grain Inspection Service.

Senator Melcher. Would you move the mike, please. You will have to just bring it closer to you, that's all.

Dr. Watson. Thank you. The instruments were not recalibrated during that period of time because it was not the policy of FGIS to recalibrate those types of instruments. They felt it was the responsibility of the manufacturer. I had requested and made several attempts or requests that they should be recalibrated, but those requests were denied.

Senator Melcher. Who did you make the requests to?

Dr. Watson. Upper management in FGIS.

Senator Melcher. And they were denied.

And so you don't know anything about this, Mr. Miller? Why not?

Dr. Watson. Can I answer that for him? I would have to say, in defense of Mr. Miller, he was not our Administrator at the time.

Senator Melcher. Well, who was the Administrator then, Mr. Watson?

Dr. Watson. Dr. Kenneth Gill~~y~~es.

Senator Melcher. Do you keep records of these requests?

Dr. Watson. I think I have copies of most of the requests. Yes, I do.

Senator Melcher. So the Administrator's Office ought to have them, too?

Dr. Watson. I would think so.

Senator Melcher. How long have you been Administrator, Mr. Miller?

Mr. Miller. Just over a year now.

Senator Melcher. And you are not aware of this?

Mr. Miller. I am not aware of the requests that came forward during that time period or the rationale for decisions for policy, why there wasn't an effort made.

Senator Melcher. Do you have any opinion, Dr. Watson, why it wasn't--why your recommendation, why your request was not accepted?

Dr. Watson. It was my understanding that it was the feeling of the Agency that this should be a responsibility of the manufacturers, to maintain the calibration of these instruments.

Senator Melcher. It was the feeling of the Agency?

Dr. Watson. That was my understanding.

Senator Melcher. How long have you been with the Agency?

Dr. Watson. Since 1978.

Senator Melcher. How long have you used Near-Infrared equipment?

Dr. Watson. I have been associated with it since its invention by ~~Dr.~~ Karl Norris.

Senator Melcher. Which was when?

Dr. Watson. Back in about ~~[illegible]~~ 1967.

Senator Melcher. And your experience when you joined the FGIS in 1978, were they or were they not recalibrated every year?

Dr. Watson. They were not recalibrated every year. In fact, they started using them, as you know--or probably don't know--in 1978 as the official method. Then they were recalibrated in 1982, but not since then.

Senator Melcher. That was 4 years.

Dr. Watson. Well, actually 5 years; it is now 1987.

Senator Melcher. No. I mean from 1978 to 198~~5~~2 was 4 years.

Dr. Watson. I believe so.

Mr. Marlenee. Senator, would you yield, briefly?

Senator Melcher. Briefly.

Mr. Marlenee. Briefly.

You said that requests had been made to the Administrator, who was Secretary--at that time--Gill~~i~~es?

Dr. Watson. No. I believe I said my request was made to upper management.

Mr. Marlenee. Upper management.

Dr. Watson. To the Division Directors, it would go.

Mr. Marlenee. But the Secretary was Gill~~i~~es at that time?

Dr. Watson. The Administrator of FGIS.

Mr. Marlenee. The Administrator was Secretary--was Gilles.

Dr. Watson. That is right, Dr. Gill~~s~~is.

Mr. Marlenee. And he, is he not, still Assistant Secretary?

Dr. Watson. He is the Assistant Secretary.

Mr. Marlenee. Thank you.

Senator Melcher. I guess the one point that isn't clear is that there was a 4-year period when they were not recalibrated; the statements made by previous witnesses is they should be recalibrated every year. Is that correct in your judgment or not?

Dr. Watson. Yes, indeed, they should be.

Senator Melcher. And so from 1978 to 1982, they were recalibrated once--I believe that is 4 years. But your request is on file and was consistently denied, I take it, because you would make that request every year?

S1T3 Dr. Watson. I think I made it almost every year (1971 To Present), yes.

Senator Melcher. Mr. Miller, you just don't know about this? Where were you before? I hate to ask this, but maybe I should know more about your background. You were not with FGIS, I take it.

Mr. Miller. I was not with FGIS, sir. I was the head have been both of those branches.

Senator Melcher. Well, the Quality Control Branch is whom?

Mr. Miller. Dr. Watson.

Senator Melcher. Did you make this suggestion, Dr. Watson, that there should not be any written confirmation of this?

Dr. Watson. I don't recall if I did or not. I really don't know. I can't answer that question.

Senator Melcher. Well, you started in 1978, is that right, with FGIS?

Dr. Watson. Yes.

Senator Melcher. Is it, as these grain inspectors and grain directors, testing directors earlier stated, that it is always done, according to the procedures outlined in the Handbook, and those procedure written notification?

Dr. Watson. My recollection is that any time we request that a bias change be made, we made a phone call on that bias change and followed it up with a note to that effect.

Senator Melcher. Well, you don't recall just how, in this meeting on June 3rd with Mr. Miller, how this recommendation was made by you, but do you agree that there was a recommendation made that it was not to have any written verification?

Dr. Watson. that is My understanding, ~~of that~~, and there could

Corr

be some misunderstanding of this, but I will give you my recollection of it. ~~That was~~ At the meeting we decided there was a need to bring the adjustment of the instruments up 0.2 percent protein. 0.1 percent was to be made with a bias change prior to August 1st; the other 0.1 percent would be made when we implemented the new calibration equation and new reference samples. The one-tenth bias change we would do verbally by telephone, and there would be no written confirmation of that. That is my recollection. Now, I could be wrong.

Mr. Marlenee. Wouldn't it be unusual, Dr. Watson, if somebody requested a written confirmation not to give a written confirmation?

Dr. Watson. I would say--depending on ~~who it~~ what the request is, I ~~would say so~~, it is not unusual.

Mr. Marlenee. If you had a request, a request for a written confirmation from one of the managers of the testing laboratories, be it private or state, wouldn't it be unusual not to give them a written confirmation?

Dr. Watson. Yes, it would.

Mr. Marlenee. Thank you.

Senator Melcher. Were you aware that Mr. Brookreson requested that?

Dr. Watson. I am not so sure that I was aware that Mr. Brookreson requested a written confirmation. Ron Bicsak handled the phone calls. He is the chemist that was working on this, and was given the direction to make all the phone calls. I do believe, though, that he did tell me that Mr. Brookreson requested written confirmation and, knowing Mr. Brookreson, I am sure that is true.

Senator Melcher. Well, let's see, were you there on June 24th for a meeting?

Dr. Watson. No, I was not.

Senator Melcher. Were you, Mr. Miller?

Mr. Miller. Yes, I was.

Senator Melcher. As I understand, from Mr. Brookreson's testimony, that was discussed, this question--precisely this question.

Mr. Miller. The question was discussed. At that point, on June 3rd--I want to correct one thing regarding the perception between--and Dr. Watson said there might have been confusion. My recollection of that meeting on June 3rd and notes from other people indicate that we had indicated we were going to try to move the system values and keep them as close to the Kjeldahl values as we could, and we indicated to the Quality Control Branch to take whatever actions were necessary to do that.

At that point, then, they came out, subsequent to that, and asked for those points in the system that were biased below the baseline values to adjust their bias upwards, above here in these hearings.

Senator Melcher. Now, you were told by somebody who had quite a bit of experience in the State of Washington, as the head of the Grain Commodity Service, that without written confirmation he hadn't implemented it, and he had requested written confirmation and been denied, and your answer to that is that you just thought the problem would go away?

Mr. Miller. No, I didn't think the problem would go away. I thought that he would go ahead and follow the oral instruction, as many other places had.

It is important to point out that when the sites were identified where they were running low versus the Kjeldahl, calls were made to these folks and they had a chance to make adjustments to their instruments at that point, to try to bring them back in line with the rest of the system. The fact that Mr. Brookreson had not done that troubles us but, at the same time, we expected he was going to do that very shortly.

Senator Melcher. Dr. Watson, on April 15th, there was an instruction, given in the usual way, for a reduction, or the 0.2 percent. On May 1st, the Montana witnesses have testified that on the basis of a 12 percent moisture basis, that that was, in effect, a reduction of 0.3 of a percent. Do you agree with that or not?

Dr. Watson. No, I do not.

Senator Melcher. Why don't you?

Dr. Watson. Because on May 4th, we established a new baseline that was unrelated to the baseline that was previously used. In other words, you are looking at a different set of samples and must divorce yourself from the previous set of samples that you were using. We were using an entirely new set of samples with an entirely new baseline that ~~now,~~ ~~and~~ we had established at ~~a baseline then of~~ 13.89.

In regards to the 12% moisture basis, this does not ~~that only~~ affect~~s~~ ~~not~~ the amount of protein in the sample as a whole; however, it does affect ~~these, but the apparent amount that you~~ the protein percent per se. ~~might wish to--that you think you have~~. In other words, you approach everything on a constant moisture basis, and it increases the marketability of your system.

Senator Melcher. I understand that.

Dr. Watson. But it does not increase or decrease the amount of protein you have.

Senator Melcher. But on the question of whether or not the actual grain might be, say, 10 percent moisture, isn't their point well made when they say that, in effect, having to have 12 percent moisture content, the effect is a reduction of minus 0.3 percent?

Dr. Watson. The way the grain is marketed now, yes, it would be.

Senator Melcher. Well, maybe I shouldn't draw any conclusions here--I want to understand it--but is their response that the FGIS must respond to the way the grain is marketed, or does FGIS set the basis for moisture content versus protein?

Dr. Watson. We only set the way we run the analysis, the way the technical aspect is carried out. We do not enter into the marketing of the grain.

Senator Melcher. Just so I thoroughly understand this, Dr. Watson, putting a 12 percent moisture content, did this advantage or disadvantage Montana Hard Red Spring Wheat producers?

Dr. Watson. I don't know if I can make a general answer to that question. To those farmers that had below, or harvested their grain below 12 percent moisture, it would be a disadvantage. To those that were above 12 percent, it would be an advantage.

Senator Melcher. Yes, I understand above. But their point, then, using that 10 percent example, is indeed correct then?

Dr. Watson. Yes.

Senator Melcher. If that were the case?

Dr. Watson. If that be the case; correct.

Senator Melcher. All right. Then they could lost have some money?

Dr. Watson. What is that?

Senator Melcher. Then those producers could have lost some money as a result of all this?

Dr. Watson. It is conceivable, yes.

Mr. Miller. Senator Melcher, I would like to respond to that question.

Senator Melcher. Is it likely rather than conceivable if, indeed, their moisture content, is lower?

Dr. Watson. I suppose, yes.

Senator Melcher. Yes. And beyond that, then, this question of the 0.2 and 0.2 reduction is to correct something that was inaccurate in the past?

Dr. Watson. Only reference ~~to~~ ~~I guess~~ the baseline for the new reference samples issued on May 4th that was established at 13.69; yes, that was incorrect.

Senator Melcher. So this is all to make up for something that was inaccurate in the past? Didn't answer question

Dr. Watson. I don't know how you are relating the 10 percent moisture--

Senator Melcher. No, I am not talking about that now. I said that 0.2 and 0.2 reduction, the April 15th and May 4th, each of those 0.2 reductions were to make up for an inaccuracy of the past?

Dr. Watson. Again, I would like to clarify that there was not 0.2 plus 0.2, did not equal 0.4. There was 0.2 for one set of reference samples reduction, and then there was 0.2 for another set of reference samples, but ~~so~~ don't add the ed131

two together to come up with 0.4. It is a total of only 0.2 in our whole system.

Senator Melcher. All right. I am not sure I can accept that myself. I'm not questioning your ability, Doctor; I'm questioning the semantics of all this.

S2T3

Mr. Miller. Senator Melcher, I would like to respond to that. At the time that occurred, I raised questions about that myself because I wasn't convinced that that was the appropriate response at that time. I had asked our Field Management Division to undertake a survey of all the field offices under our responsibility to determine what the impact of these changes were. We have not been able to confirm, in any of our locations, that there was a doubling-up of the 0.2 bias adjustment.

We did a specific survey. We have turned those surveys over to the OGI folks to look at. We hope that in the course of their thorough investigation in this matter that that issue will be resolved. I certainly was led to believe that there was not a doubling-up at that time, based on the information that was provided to me as a result of that survey. I raised the question myself at that time, "Was this, in fact, a doubling-up of the 0.2 bias adjustment?" I was assured that it was not. I still believe that, based on the information I have seen.

Mr. Marlenee. Mr. Miller, not to be smart-alecky or to put you in a bad light, but were you not gone and on vacation on May 4th when this decision to lower a second 0.2 was made and a communication issued?

Mr. Miller. No, I was not on vacation. I was at a meeting in Kansas, in Topeka, Kansas, with the field office managers and the American Association of Independent Grain Graders and Inspectors.

Mr. Marlenee. So you were not gone on May 4th?

Mr. Miller. I was with the field office managers and with all of our private inspection folks.

Mr. Marlenee. All right. If I may continue, Senator?

Mr. Miller. Again, I want to say that I don't want to leave the statement unchallenged, though, that there was a second 0.2 bias adjustment that occurred on May 4 that caused a lowering of the system by 0.4. I think that is a very fundamental consideration in this discussion that needs to be resolved.

Mr. Marlenee. All right.

Dr. Watson, it has been alleged that you felt the order of May 4th to lower the baseline 0.2 of a percent was partially or at least completely, or at least partially incorrect, and that you communicated this within FGIS, urging corrective action, and also to Al Williams in Montana and Mr. Brown in Portland, and to others. Is that correct?

* Dr. Watson. ~~I don't know if I~~--I felt the 0.2 percent

lowering of our new reference samples was, indeed, incorrect, and I think I expressed this view to my Division Director; I am not sure.

Mr. Marlenee. Yes. Well, now, and I want to get some information from the staff here, it is my understanding that Montana--that on April 15th the reduction was taken in Montana by 0.2 of a percent, and that after April 15th, adjustment in Montana was carried out; comparison and confirmation tests on the new national reference samples were taken, and the results were sent to Kansas City, and--I think we have evidence--that they were told that this was okay and to implement the new standards on the 4th of May.

All right. You got the new national standards, and they are out there. Montana got them and they retested everything and recalibrated their machines, took new tests and sent them on, sent them back for confirmation; at which point you confirmed that. Then on May 4th, Montana and others were instructed to lower another 0.2 of a percent.

Now, if that isn't--Mr. Miller, if that isn't a double lowering by 0.2 of a percent, then what the hell is? I'm flunking grade school arithmetic.

Mr. Miller. Well, I'm not aware of that. You will have to ask Dr. Watson to explain it. I don't know about that part of it.

Dr. Watson. Can I try and explain it again, using the flip chart for you, because I think it is a very fundamental question, as Mr. Miller has pointed out here. Is it okay if I go over and use that?

Mr. Marlenee. Well, you said you thought it was incorrect.

Dr. Watson. No. I did say I thought it was incorrect to lower the new reference samples by 0.2 percent protein.

Mr. Marlenee. That's right.

Dr. Watson. But it's not a doubling-up and lowering a total of 0.4 percent.

Mr. Marlenee. Well, no, because you have already taken 0.2 of a percent of--

Dr. Watson. No. No. We had taken 0.2 percent off in another set of reference samples. Now, when you're going to another set of reference samples, forget ~~the~~ about the ~~those~~ old ones--and consider only the ~~let's go to the~~ new ones. You're going to a new baseline against the Kjeldahl, and that baseline is 0.2 below the Kjeldahl. So it is not 0.4 below the Kjeldahl; it is only 0.2 below the Kjeldahl.

Mr. Marlenee. Well, isn't the test that you conducted for Montana, a comparison between April and May 4th, a comparison between old and new?

Dr. Watson. Yes, and those--

Mr. Marlenee. Yes.

Dr. Watson. --~~agreed with each other~~. If you recall, they agreed with each other. Now, there is always some discrepancy between reference samples, and we know these discrepancies exist, and it could be 0.1 or 0.15, or 0.2 percent protein. However, I will stand by the record, that if you have a set of reference samples ~~based~~ biased to the Kjeldahl ~~ever-huge~~ and you lower it 0.2 percent, and then you have another set of reference samples that is 0.2 below the Kjeldahl, and you ~~go to~~ use this other set, it is still just 0.2 below the Kjeldahl; it's not 0.4, because you are going back to a same Kjeldahl baseline again. You are always referring back to the Kjeldahl as a baseline.

Mr. Marlenee. You have said that the result of all this miss-mash was a lowering, and perhaps an incorrect lowering.

I am going to switch to Kirk Miller at this time. You became aware that there might be some problem associated with the May 4th order to lower the protein readings, and the subsequent order raising the readings on June 15th. Now, that problem was brought to your attention. My record can be confirmed, it shows that you knew by at least 6/24 of 1987, at which time there was a meeting in Portland, Oregon.

Mr. Miller. I would like to explain that chronology of events. Again, as I indicated before, previously, when the events took place on May 4, when I was at the meeting in Kansas City with all the field office managers and with the American Association of Independent Graders and Weighers, the

13.69.

We are told that--and Dr. Watson, for instance, told Mr. Williams of Montana that there had been an error on lowering the Hard Red Spring protein baseline values. I think you just restated--you didn't agree with that, did you, Dr. Watson, from 13.89 to 13.69?

Dr. Watson. No, I did not.

Senator Melcher. And since you didn't agree to it, why was it done?

Dr. Watson. It was an administrative decision.

Senator Melcher. Who made the decision, Mr. Miller?

Mr. Miller. I don't recall that I made that decision. I wasn't consulted about it. I was surprised when it had been made, to be truthful about it.

Senator Melcher. You were not consulted?

Mr. Miller. I was not.

Senator Melcher. And so in communicating your disagreement with it, Dr. Watson, Al Williams interpreted you correctly, there was an error, in other words?

Dr. Watson. You can ~~tell~~ say--yes, it was an error, as far as I am concerned. That is my opinion.

Mr. Miller. Senator Melcher, may I interrupt at that point for a comment?

Senator Melcher. Yes.

Mr. Miller. I think that a very fundamental point needs to be made here, that I think there has been some disagreement within the management of FGIS between Dr. Watson and other senior managers in FGIS about that whole change that took place at that time, relative to where the reference values for the NIR should be set versus the Kjeldahl.

Again, the data that had taken place, as a result of Dr. Shuey's study earlier in the spring, had indicated that the system was over-reporting proteins on the NIR instruments. It was thought at that time that there was a slope problem which was a result of an improper calibration that causes the instruments to read protein too high, at the high end of the scale, and too low at the low end of the scale.

Dr. Shuey and others in the senior management had agreed and recommended to me that we make the 0.2 percent lowering of the bias on April 15th. We were still using--on May 4th, we were still using the same calibration equations that were thought to be faulted and flawed back on April 15th. And at that point, it was felt by most of the other senior management in the Agency that in order to continue to use that flawed calibration that you had to transfer that 0.2 over to the new reference samples, that that was absolutely necessary.

Dr. Watson did not agree with that. He has been in charge of the Kjeldahl operation and has defended it steadfastly down through the years, although even when you compare the results of the Kjeldahl operation with other outside test or retest--what had been shipped out to see, in fact, if their allegations are correct; and if they are not correct, they can go fly a kite.

Mr. Rogers. Well, I thought maybe that we had collaborative exchange of samples. Somebody else would have to verify that. I am not in that end of it. We just have to deal with the complaints, and we pass the complaints on.

Senator Melcher. You do exchange samples, do you not, Dr. Watson; and they are done by the same method, chemical method, Kjeldahl.

Dr. Watson. Yes.

May I make one comment? Maybe I am speaking out of turn here. But in regard to the exchange of samples ~~and that~~, we exchange samples with the Japanese Food Agency on a periodic basis. And over the past several years, our Kjeldahl method has agreed on over a hundred samples a difference of zero. So we are in complete agreement with them on our Kjeldahl method.

In regard to the samples and the complaints from overseas, and the bias adjustment that was made--or the baseline adjustment that was made in April, we had several hundred samples that we had sampled on ship lots at origin and at destination showing, indeed, that our NIR's were high. And that was just not on a very few samples, it was on several hundred samples, to verify that there should be an adjustment made.

Mr. Marlenee. Did you recheck them?

Dr. Watson. We ran the analysis, yes, in our laboratory in Kansas City and it did, indeed, show that the NIR's on the West Coast were high.

~~Now, let me say that in regard to this--~~

Mr. Marlenee. I am a bit more comfortable then.

Dr. Watson. It was not just a hundred samples. I think-- ~~Bill, how many were~~ there were several hundred? About 700, I believe, ~~700 samples,~~ or something like that that we ran, so there was a considerable number of samples to verify this.

Now, in regards to the baseline change, I wanted to make one comment here because I think I made the wrong impression. I disagreed also with the baseline change, on April 15th, across the board. I thought that should ~~be~~ have done on a location-by-location basis, because I ~~don't~~ didn't feel that all locations were running high on protein.

At that time, we did not have national reference samples and there was only certain locations, I believed, were running high; and it should have been done on a location-by-location basis and not across the board across the United States.

Mr. Marlenee. Well, I wish to tell you, on the moisture, 12 moisture basis formula, that we've got to get out there and cut some wheat and grain. That's all there is to it. It doesn't keep well, you know, and it's not quality grain. But if that's what they want, I guess we've got to cut it with a lot of moisture.

Senator Melcher. Thank you for clarifying that, Dr. Watson.

Dr. Martinez, we haven't asked you any questions, but we are very interested in what your task force is--the goals you have, and we wish you all Godspeed in your endeavors, and the rest of the task force also.

Dr. Martinez. Thank you.

Senator Melcher. I want to thank all of you for your testimony here today. We will keep this hearing record open for two weeks for any further comments by any interested party.

The Committee is adjourned.

[Whereupon, at 1:50 p.m., the Committee adjourned at the call of the chair.]

Attachment II
Page 1 of 6

S. Hrg. 100-561

THE IMPACT OF FEDERAL INSPECTION SERVICE PROTEIN MEASUREMENT ON WHEAT PRICES

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON AGRICULTURAL PRODUCTION
AND STABILIZATION OF PRICES

OF THE

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY
UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON
WHEAT, SOYBEANS, AND FEED GRAINS

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

FEDERAL GRAIN INSPECTION SERVICE'S CHANGE IN GRAIN PROTEIN MEASUREMENT

NOVEMBER 10, 1987

Serial No. 100-66

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Attachment II
Page 2 of 6

Senator MELCHER. Thank you, Keith.

Our next witness is Rex Denning, Chief Grain Inspector for the Montana Department of Agriculture.

STATEMENT OF REX L. DENNING, CHIEF GRAIN INSPECTOR, GRAIN STANDARDS BUREAU, MONTANA DEPARTMENT OF AGRICULTURE, GREAT FALLS, MT

Mr. DENNING. Thank you, Senator.

For the record, my name is Rex L. Denning. I am the Chief Grain Inspector for the State of Montana.

Mr. Chairman, members of the committee, I appreciate this opportunity to discuss several procedural and technical problems evolving around written and verbal protein calibration adjustments on NIR machines between April 14 and July 8, 1987.

The following is a description of detailed events concerning the lowering of Hard Red Spring wheat protein baseline values.

April 14, 1987, I was instructed by Larry Zehm of the Moscow, Idaho, field office to lower Hard Red Spring wheat protein baseline values 0.2 of a percent, effective at 8 a.m., the following day, April 15, 1987.

On April 15, these instructions were carried out.

May 4, 1987, the Grain Standards Bureau was instructed, per written notification from Dr. C.A. Watson, to commence using new national reference samples with the baseline value for Hard Red Spring wheat being 13.89.

That same day, May 4, 1987, LeRoy Baker from the Moscow, Idaho, field office, called and instructed me to lower the baseline values on Hard Red Spring wheat from 13.89 to 13.69.

Mr. Chairman, from here on, I mention the name of Al Williams: I want to make it clear who he is. Mr. Williams is the Protein Coordinator for the State of Montana and, in my opinion, there is not a more qualified person for this position. Mr. Baker from the Moscow field office can attest to this.

June 15, 1987, Al Williams of the Montana Grain Standards Bureau was instructed by Larry Zehm, FGIS field office, to raise the Hard Red Spring wheat protein baseline from 13.69 to 13.79. Larry assured Mr. Williams that this was a nationwide raise, and instructed firmly that this was not to be announced. Al protested to Larry about the change not being made public.

June 16, 1987, LeRoy Baker of the Moscow, Idaho field office told Al Williams that a mistake had been made. He said that in Dr. Watson's absence, the new national reference samples for Hard Red Spring wheat lowered 0.2 percent on May 4 was done in error. The June 15 raise of 0.1 percent was to compensate for half of this error, and the other 0.1 percent raise would be taken care of sometime in August. Mr. Williams told Mr. Baker he felt this should be corrected immediately.

June 29, 1987, Al Williams talked to Bill Brookreson of Washington State and was told that as of yet, they had not raised their protein level on June 15, as Larry Zehm had stated would take place. At that time, Bill Brookreson made the same statement that LeRoy Baker had made about the error happening when Dr. Watson was on vacation. Mr. Williams informed me of his conversation. I instructed him to call Dr. Watson in Kansas City for further information. Dr. Watson informed Mr. Williams that this error was made while he was on vacation. Dr. Watson recommended that the correction be made immediately, but was denied, and was told that the error would be rectified by 0.1 percent raise in June and 0.1 percent raise in August. It was inferred to Al Williams that certain positions in FGIS would be in jeopardy if the public found out about this problem.

Mr. Williams strongly protested the handling of this matter.

July 1, 1987, Al Williams and myself were called to Helena to meet with Keith Kelly and Roy Bjornson concerning this matter. At that time, we explained all the events that had transpired on the lowering and raising of Hard Red Spring wheat protein baseline values by FGIS. Al and myself expressed deep concern for recent changes in Hard Red Spring wheat proteins. We informed Mr. Kelly of an unusual amount of changes in Hard Red Spring wheat biases, and a change of the usual procedures followed by the FGIS, and unsubstantiated rumors from the inspection field. We recommended to Mr. Kelly to approach this with extreme caution because this was made clear from FGIS that this was not to be disclosed; and being an FGIS-designated office, it was not in our best interest to be involved in a controversy unless he—referring to Mr. Kelly—had more information. This was also the first time in Al's and my careers, which constitutes over 50 years experience, that this type of order from FGIS had ever been given. It was noted that I had waited long enough for a written response from Larry Zehm because, in the past, FGIS had always sent written verification on any instructions given by them. I was instructed to get written verification at this time.

July 2, 1987, I requested written verification from Larry Zehm of the instruction issued on June 15, 1987, to raise baseline values of Hard Red Spring wheat from 13.69 to 13.79.

July 8, 1987, I received a phone call from Larry Zehm stating that he was instructed not to give written verification of the instruction to raise baseline values of Hard Red Spring wheat from 13.69 to 13.79 because his instructions were also verbal. He stated he had been instructed not to give any written verification on this matter.

The Montana Grain Standards Bureau takes great pride in following all instructions from the Montana Department of Agriculture and the Federal Grain Inspection Service. We have an excellent working relationship with the State Department and the FGIS field office, Moscow, Idaho. All of our past onsite reviews substantially reflect this.

Mr. Chairman, the attached correspondence is what took place from the Montana Grain Standards Bureau and the Montana Department of Agriculture in Helena.

Thank you.

[The prepared statement of Mr. Denning follows:]

Mr. DENNING. Yes, sir.

Mr. MARLENEE. On June 15 or thereabouts. And prior to that time, had you been told—you personally—had you been told by anyone in the FGIS that the second order to lower was in error?

Mr. DENNING. No, sir. I don't believe so.

Mr. MARLENEE. Nobody with the Federal Grain Inspection Service told you that the second order was in error?

Mr. DENNING. The first we had heard that was on June 15.

Mr. MARLENEE. On June 15 you heard that the second order was in error. Who told you that it was in error?

Mr. DENNING. My protein coordinator, sir, from Montana. The three conversations that had taken place on mentioning of an error was directly through him—or with him, from three separate people.

Mr. MARLENEE. Three separate people?

Mr. DENNING. Yes, sir.

Mr. MARLENEE. Were those people LeRoy Baker, the Moscow, Idaho, field man for FGIS?

Mr. DENNING. Yes, sir. One of them, sir. Yes.

Mr. MARLENEE. Was the other one Bill Brookreson?

Mr. DENNING. Yes, sir.

Mr. MARLENEE. From the State of Washington, and he stated that the second order was in error?

Mr. DENNING. Yes, sir.

Mr. MARLENEE. At what date? Approximately.

Mr. DENNING. That was on June 29, sir.

Mr. MARLENEE. Dr. Watson, the third one——

Mr. DENNING. Yes.

Mr. MARLENEE [continuing]. Head of the Inspection Service in Kansas City?

Mr. DENNING. That was also on June 29.

Mr. MARLENEE. June 29. Thank you. Now, they all stated that was in error, in a private conversation. Then you received instruction by Larry Zehm to raise it 0.1 of a percent—or prior to that time you had.

Mr. DENNING. Yes, sir.

Mr. MARLENEE. Did you request written confirmation by letter on raising it the 0.1 of a percent?

Mr. DENNING. Yes, sir, I did. That is part of the record.

Mr. MARLENEE. You requested, by letter, on raising it.

Mr. DENNING. That was on July 2, sir.

Mr. MARLENEE. And how were you responded to?

Mr. DENNING. I received a phone call from Larry Zehm and he stated that the instruction was given to him verbally, and he was instructed not to give any written verification on that matter.

Mr. MARLENEE. Did Mr. Zehm state why he would not supply written verification?

Mr. DENNING. No. But I am sure Mr. Zehm was following orders.

Mr. MARLENEE. Following orders. All right. If you were instructed to raise the basis 0.1 of 1 percent, wouldn't it be logical that you would make this information made publicly?

Mr. DENNING. Without a doubt. I mean if it wasn't a public matter, I mean if it was just part of the flow, I would never doubt

Senator **Melcher**. Is the amount that Gregg Holt cited about the amount they lost?

Mr. **Denning**. I would have confidence in that, but I would like to make another comparison, if I may.

Senator **Melcher**. Please do.

Mr. **Denning**. We have calculated out—my protein coordinator, like I mentioned, is as competent as anybody alive——

Senator **Melcher**. And that is Mr. Williams?

Mr. **Denning**. Yes, sir. And you calculate out a 52-car unit train at a 14 percent protein level, and you take one-quarter away from that, at rates that the premiums we have been seeing, you are looking at a $30,000 loss on one train. So yes, sir, it is substantial. You calculate 0.1 or 0.2 out in dollars on a particular lot of grain, you're talking an awful lot of money.

Senator **Melcher**. Thank you.

Mr. **Denning**. Yes, sir.

Senator **Melcher**. Chairman Glickman.

Mr. **Glickman**. Has Mr. Marlenee been——

Senator **Melcher**. Yes, he has.

Mr. **Glickman**. Thank you.

I want to ask you what I call "macro" questions first. But I want to get to this question of dishonesty. Following this up, do you believe that a crime has been committed here by anybody?

Mr. **Denning**. I believe there has been an error made and it wasn't corrected properly.

Mr. **Glickman**. So somebody was covering up for their own mistakes at a certain high level?

Mr. **Denning**. That is what I have been told.

Mr. **Glickman**. By whom?

Mr. **Denning**. By a protein coordinator.

Mr. **Glickman**. Who is located where?

Mr. **Denning**. He is the assistant at the official agency in Great Falls. Three conversations took place with him. I was never told by anybody in FGIS or anybody else that there had been an error. This all come from him. During this particular time, I was on vacation, or at school or somewhere, but him and I are both mentioned here. He is our protein coordinator; he takes care of all the protein problems. And, like I mentioned, 90 percent of our problems in grain inspection are protein. There's so much money involved in it.

Mr. **Glickman**. So your protein coordinator, though, told you that somebody had been covering up. Who had been covering up?

Mr. **Denning**. He told me there was an error made, and that the individual wanted to correct it and was denied.

Mr. **Glickman**. The individual was where?

Mr. **Denning**. The individual—what he told me, was Dr. Watson.

Mr. **Glickman**. Have you ever been able to confirm this?

Mr. **Denning**. No, sir, I have not. I have never heard of a Federal—like I say, I have never heard of FGIS ever mentioning it to me.

Mr. **Glickman**. OK. Now, going away for a moment from the issue that you raise, I want to talk for a second about the issue of the general policy of changing the computations because I am reading from Winston Wilson's statement, and he will be the next witness on this panel. He talks about the export problems on protein.

communication is absolutely necessary when we're dealing with millions of dollars for our producers.

Now, on or about the 15th or 24th of June, you were personally aware that labs in Washington were operating at a 0.1 of a percent. You had told them—suggested to them, if you will—at the very least, suggested to them that they raise this by 0.1 of a percent, and they did not do that. It took until July 29 before that correction was made.

Let me ask you this very significant question at this point. Do you have, as the Director, the power vested in you to go out there, either with written communication or a verbal order, ordering those people to raise the calibration on the machine?

Mr. MILLER. I believe I do.

Mr. MARLENEE. Mr. Chairman, I am going to rest at that point.

Senator MELCHER. Part of the unanswered points, Mr. Miller, concern this communication from Dr. Watson or others in FGIS that there was an error made in lowering the Hard Red Spring wheat protein baseline values on May 4 from 13.89 to 13.69.

Dr. Watson, for instance, told Mr. Williams of Montana that there had been an error on lowering the Hard Red Spring protein baseline values. I think you just stated that you didn't agree with that. Did you, Dr. Watson?

Dr. WATSON. No, I did not.

Senator MELCHER. And since you didn't agree to it, why was it done?

Dr. WATSON. It was an administrative decision.

Senator MELCHER. Who made the decision, Mr. Miller?

Mr. MILLER. I don't recall that I made that decision. I wasn't consulted about it. I was surprised when it had been made, to be truthful about it.

Senator MELCHER. You were not consulted?

Mr. MILLER. I was not.

Senator MELCHER. And so in communicating your disagreement with it, Dr. Watson, Al Williams interpreted you correctly. There was an error, in other words?

Dr. WATSON. You can say—yes, it was an error, as far as I am concerned. That is my opinion.

Mr. MILLER. Senator Melcher, may I interrupt at that point for a comment?

Senator MELCHER. Yes.

Mr. MILLER. I think that a very fundamental point needs to be made here. I think there has been some disagreement within the management of FGIS between Dr. Watson and other senior managers in FGIS about the change that took place at that time, relative to where the reference values for the NIR should be set versus the Kjeldahl.

Again, the data resulting from Dr. Shuey's study earlier in the spring, indicated that the system was overreporting proteins on the NIR instruments. It was thought at that time that there was a slope problem which was a result of an improper calibration that causes the instruments to determine protein erroneously.

Dr. Shuey and others in the senior management had agreed and recommended to me that we make the 0.2 percent adjustment on April 15. On May 4, we were still using the same calibration equa-

Senator **Baucus**. Mr. Galliart.

STATEMENT OF DAVID R. GALLIART, DEPUTY ADMINISTRATOR, FEDERAL GRAIN INSPECTION SERVICE, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Mr. **Galliart**. Mr. Chairman, I have structured my statement so that I'll address the question and then the answer.

Senator **Baucus**. Certainly.

QUESTION

Mr. **Galliart**. The question: Watson's claim of continual harassment which included "abolishing his position in Kansas City and attempting to transfer him to Washington, D.C." and, most recently, assigning him a project for which he is not qualified.

ANSWER

Before I give you the answer to that question, I would like to say to you that shortly after the November 1987 hearing, it came to my attention that Mr. Jackson had made a comment to Dr. Watson to the effect that his testimony was of the type that could end careers such as Watson's, Jackson's, and Mr. Miller's.

I contacted Mr. Jackson and asked if he had indeed made that comment to Mr. Watson, which he confirmed. I told Mr. Jackson that I felt the comment was inappropriate. I contacted Mr. Jackson because I did not and do not believe the remark to be factual or true. In other words, testimony cannot end careers.

Now, in answer to the question, on January 8, 1988, Dr. Watson wrote to the Director, Quality Assurance and Research Division (QARD), claiming that he was not performing tasks at the GM-14 level. As a result of his complaint, a desk audit of his position was conducted by the Animal and Plant Health Inspection Service (provides administrative support for FGIS). The audit recommended an abolishment of the position.

FGIS then offered Dr. Watson a GM-14 position in Washington, DC because there were no current GM-14 positions vacant at the Kansas City office for which he qualified. Such a vacancy did exist in Washington. Dr. Watson furnished medical documentation as to why he could not relocate, along with announcing plans to retire in January 1990. Prior to this time, he had not filed any documentation of a medical problem. To accommodate his needs, the agency agreed to continue to carry him at his current grade level.

QUESTION

I have been requested to comment on any actions that I have taken to ensure that Dr. Watson would not be retaliated against as a result of his testimony of November 10, 1987.

ANSWER

In my view, Dr. Watson revealed nothing in his testimony which was or could have been embarrassing to the agency—and I was present at the hearing. He was essentially in agreement with the actions of the agency but apparently had some disagreements with upper management in the method of accomplishing technical changes. There is no reason for the agency to retaliate, as alleged, because the testimony essentially was in agreement with the necessity and results of its actions—agency actions, that is.

In my view, Mr. Jackson's actions involving Dr. Watson were work performance related actions and not retaliatory as a result of his testimony. Dr. Watson has a history of complaints against "upper management." In review the response to his complaints, I concluded that Dr. Watson's performance is and has been the crux of the problem and subsequent actions by Mr. Jackson.

QUESTION

Provide my reasons for removing Dr. Watson from the Quality Control Branch and reassigning him to Assistant to the Director.

ANSWER

Mr. Jackson, at the oral direction of Mr. Kirk Miller, then Administrator of FGIS, reassigned Dr. Watson to the new position of Assistant to the Director from the position of Chief, Quality Control Branch, without any reduction in grade or pay. The reassignment was effective on August 17, 1987, predating Dr. Watson's November 10, 1987, testimony by some 3 months. As a consequence, the reassignment could not have been based on or related to any alleged harassment resulting from the testimony. However, having been asked to advise of the reasons for the reassignment, we provide the following:

As early as February 4, 1986, in a personal meeting with Dr. Watson, the Director, Field Management Division, expressed his dissatisfaction with the protein work being done at Kansas City. He stated concerns for questionable operating procedures in Quality Control Testing Branch (QCTB) and unexplainable protein differences in the field which had resulted in FGIS management's lack of confidence in the QCTB protein program. Concern was also expressed regarding Dr. Watson's lack of on-the-job training for protein staff personnel. (This meeting was documented in a February 26, 1986, memorandum to the files by Mr. John Marshall, Director of the Field Management Division, and at that time responsible for the QCTB activities.)

By Classification and Personnel Management Review of QCTB memorandum dated March 13, 1986, from Mr. Marshall, Dr. Watson was provided the results of a review which had been conducted (at FGIS' request) by APHIS' Field Personnel Services during the fall of 1985. The results of the review reflected poorly upon Dr. Watson as a supervisor of the branch.

During the week of February 3-7, 1986, Mr. Homer Dunn, Deputy Director, Field Management Division, conducted a review of the QCTB Protein Program and submitted a written trip report to the Deputy Administrator by memorandum of March 13, 1986. The report indicated a number of problems in the Branch stemming from insufficient supervision and direction for QCTB protein staff, that is, Dr. Watson was not providing the leadership and personal involvement necessary to resolve or uncover problems.

By his March 19, 1986, memorandum, subject: Preliminary Second Quarter Performance Review, Mr. Marshall advised Dr.

Watson that his level of performance was less than satisfactory (for reasons discussed above) and advised him of the need for immediate improvement in his performance.

In short, for some time prior to his reassignment out of the position of Quality Control Branch Chief, Dr. Watson had not been performing at an acceptable level and was not providing effective supervision and direction for the Branch or its staff.

QUESTION

My knowledge of his alleged part-time and inadequate work assignments.

ANSWER

I do not recall receiving notice of his allegations until he wrote to the Director, Quality Assurance Research Division, on January 8, 1988, claiming that he was not performing tasks at the GM-14 level. Subsequently, a desk audit of his position was conducted by APHIS.

QUESTION

The reasons behind Dr. Watson's two 1-year details when personnel regulations allow for only one 1-year detail.

I think Mr. Robertson covered that rather thoroughly, so I won't go into it.

QUESTION

Difference in the project of chemical residues assigned to Dr. Watson by Mr. Jackson in 1989 and the more recent one mentioned by Mrs. Smith in her July 19 letter to me.

ANSWER

The project is one and the same. It is a new project, and we consider it to be the same.

We appreciate your concern relative to Dr. Clifford A. Watson, Assistant to the Director, Federal Grain Inspection Service, U.S. Department of Agriculture. The agency has made numerous efforts to address Dr. Watson's allegations and continuing job dissatisfaction. We are interested in addressing your concerns relative to the allegations Dr. Watson has presented to you.

Thank you.

Senator BAUCUS. Thank you.

[The prepared statement of Mr. Galliart follows:]

STATEMENT OF DAVID R. GALLIART

DEPUTY ADMINISTRATTOR
FEDERAL GRAIN INSPECTION SERVICE
U.S. DEPARTMENT OF AGRICULTURE

Before the

SENATE COMMITTEE ON AGRICULTURE
THURSDAY, OCTOBER 4, 1990
RUSSELL SENATE OFFICE BUILDING

Thank you Mr. Chairman. I appreciate the opportunity to appear before you to provide my views on the claims by Dr. Clifford A. Watson that he has been harassed by FGIS upper management. I have structured my statement to respond to the series of questions which were posed in your letter to me of September 27. With your permission, I will repeat the questions and offer my answers.

1. Watson's claim of continual harassment which included "abolishing his position in Kansas City and attempting to transfer him to Washington, D.C. . . . " and, most recently, assigning him a project for which he is not qualified.

Answer: Shortly after the November 1987 hearing, it came to my attention that Mr. Jackson had made a comment to Dr. Watson to the effect that his testimony was of the type that could end careers such as Watson's, Jackson's and Mr. Miller's. I contacted Mr. Jackson and asked if he had indeed made that comment to Mr. Watson, which he confirmed. I told Mr. Jackson that I thought the comment was inappropriate. I contacted Mr. Jackson because I did not and do not believe the remark to be factual or true. On January 8, 1988, Dr. Watson wrote to the Director, Quality Assurance and Research Division (QARD), claiming that he was not performing tasks at the GM-14 level. As a result of his complaint, a desk audit of his position was conducted by the Animal and Plant Health Inspection Service (provides administrative support for FGIS). The audit recommended an abolishment of the position.

FGIS then offered Dr. Watson a GM-14 position in Washington, D.C. because there were no current GM-14 positions vacant at the Kansas City office for which he qualified. Such a vacancy did exist in Washington. Dr. Watson furnished medical documentation as to why he could not relocate, along with announcing plans to retire in January 1990. Prior to this time, he had not filed any documentation of a medical problem. To accommodate his needs, the Agency agreed to continue to carry him at his current grade level.

*According to Jackson, a GS-14 (engineer) vacancy did exist in Kansas City at that time; however, Watson apparently did not qualify for the position.

2. I have been requested to comment on any actions that I have taken to ensure that Dr. Watson would not be retaliated against as a result of his testimony of November 10, 1987.

Answer: In my view, Dr Watson revealed nothing in his testimony which was or could have been embarrassing to the Agency. He was essentially in agreement with the actions of the Agency but apparently had some disagreements with upper management in the method of accomplishing technical changes. There is no reason for the Agency to retaliate, as alleged, because the testimony essentially was in agreement with the necessity and results with its actions.

In my view, Mr. Jackson's actions involving Dr. Watson were work performance related actions and not retaliatory as a result of his testimony. Dr. Watson has a history of complaints against "upper management." In reviewing the response to his complaints, I concluded that Dr. Watson's performance is and has been the crux of the problem and subsequent actions by Jackson.

3. Provide my reasons for removing Dr. Watson from the Quality Control Branch and reassigning him to Assistant to the Director.

Answer: Mr. Jackson, at the oral direction of Mr. Kirk Miller, then Administrator of FGIS, reassigned Dr. Watson to the new position of Assistant to the Director from the position of Chief, Quality Control Branch, without any reduction in grade or pay. The reassignment was effective on August 17, 1987, pre-dating Dr. Watson's November 10, 1987, testimony by some 3 months. As a consequence, the reassignment could not have been based on or related to any alleged harassment resulting from the testimony. However, having been asked to advise of the reasons for the reassignment, we provide the following:

a. As early as February 4, 1986, in a personal meeting with Dr. Watson, the Director, Field Managemet Division, expressed his dissatisfaction with the protein work being done at Kansas City. He stated concerns for questionable operating procedures in Quality Control Testing Branch (QCTB) and unexplainable protein differences in the field which had resulted in FGIS management's lack of confidence in the QCTB protein program. Concern was also expressed regarding Dr. Watson's lack of on-the-job training for protein staff personnel. (This meeting was documented in a February 24, 1986, memorandum to the files by Mr. John Marshall, Director, Field Management Division, and at that time responsible for QCTB activities.)

b. By Classification and Personnel Management Review of QCTB memorandum dated March 13, 1986, from Mr. Marshall, Dr. Watson was provided the results of a review which had been conducted (at FGIS' request) by APHIS' Field Personnel Services during the Fall 1985. The results of the review reflected poorly upon Dr. Watson as a supervisor of the branch.

c. During the week of February 3-7, 1986, Mr. Homer Dunn (Deputy Director, Field Management Division), conducted a review of the QCTB Protein Program and submitted a written trip report to the Deputy Administrator by memorandum of March 13, 1986. The report indicated a number of problems in the Branch stemming from insufficient supervision and direction for QCTB protein staff, i.e., Dr. Watson was not providing the leadership and personal involvement necessary to resolve or uncover problems.

d. By his March 19, 1986, memorandum, subject: Preliminary Second Quarter Performance Review, Mr. Marshall advised Dr. Watson that his level of performance was less than satisfactory (for reasons discussed above) and advised him of the need for immediate improvement in his performance.

In short, for some time prior to his reassignment out of the position of Quality Control Branch Chief, Dr. Watson had not been performing at an acceptable level and was not providing effective supervision and direction for the Branch or its staff.

4. My knowledge of his alleged part-time and inadequate work assignments.

Answer: I do not recall receiving notice of his allegations until he wrote to the Director, QARD, on January 8, 1988, claiming that he was not performing tasks at the GM-14 level. Subsequently, a desk audit of his position was conducted by the APHIS.

5. The reasons behind Dr. Watson's two 1-year details when personnel regulations allow for only one 1-year detail.

Answer: The Office of Personnel Management implementing regulations concerning details are set forth in Federal Personnel Manual Chapter 300, Subchapter 8, which indicates in pertinent part:

- A detail is the temporary assignment to a different position or set of duties. (There is no formal position change; the employee continues to hold the position from which detailed and keeps the same pay and status.)

- Agencies may detail employees for any legitimate management purpose, e.g., special projects.

- Agencies may make and extend details in 120-day increments up to a maximum of 1 year.

- Requests for extensions beyond the maximum time limits must be submitted to the Office of Personnel Management (OPM).

- A new time limit applies each time an employee is detailed.

By the Deputy Administrator's October 26, 1988, letter, Dr. Watson was "detailed" to the Soybean Protein and Oil project for a period not to exceed 1 year. The effective date of the detail was October 31, 1988; the detail was terminated October 7, 1989. Such detail was within the maximum time frame of 1 year prescribed by the Federal Personnel Manual, noted above.

Subsequently, in November 1989, Dr. Watson was "assigned" to be the Project Manager of the Chemical Residue Research Program. Such assignment, even if considered a detail, is not in conflict with OPM guidance discussed above as it is a new detail and a new time limit would apply. There is nothing in Federal Personnel rules to prohibit separate, back-to-back details, each of which could be up to 1 year in length; the only prohibition is that any one detail may not exceed the 1 year limit without OPM approval.

(It is noted that Dr. Watson's official, permanent position involves duties such as significant technical assignments on a wide variety of problems, special studies and analyses, technical and scientific aspects of program operations, etc. From a pure, technical Federal personnel management standpoint, it is arguable that Dr. Watson's assignments to the Soybean and Chemical Residue projects are not actually "details" at all but rather merely assignments within the broad duties and responsibilities of his position. Be that as it may, even as details, the assignments are not improper.)

6. Differences in the project of chemical residues assigned to Dr. Watson by Mr. Jackson in 1989 and the more recent one mentioned by Ms. Smith in her July 19 letter to me.

Answer: The project is one and the same.

We appreciate your concern relative to Dr. Clifford A. Watson, Assistant to the Director, Federal Grain Inspection Service, U.S. Department of Agriculture. The Agency has made numerous efforts to address Dr. Watson's allegations and continuing job dissatisfaction. We are interested in addressing your concerns relative to the allegations Dr. Watson has presented to you.

Dr. Watson has several avenues of redress in which to raise his allegations and job dissatisfactions.

In view of the various mechanisms and processes to which Dr. Watson is entitled, we believe that his allegations would be properly, fairly, and effectively addressed to the benefit of all concerned by utilization of these due process rights afforded him by law.

Senator **Baucus**. It is my understanding that when Dr. Watson was transferred from Chief, Quality Control—is that it?

Mr. **Jackson**. Reassigned.

Senator **Baucus**. Reassigned; he was Branch Chief.

Mr. **Jackson**. That's correct.

Senator **Baucus**. It is my understanding that at that time, he was not given any indication that he was doing poor work; that is, that he was reassigned to be I guess an Assistant Director at another——

Mr. **Jackson**. May I speak to that, Mr. Chairman?

Senator **Baucus**. Yes.

Mr. **Jackson**. He was not reassigned from the standpoint of an unsatisfactory rating for performance; it was a satisfactory rating. But my recollection of talking with Mr. Miller was that there was a lack of confidence in his leadership. I think that was coming back from people in the field to Mr. Miller, and I received some of that also. And I think that is borne out in the testimony which was a part of the hearings.

Senator **Baucus**. Yes, but the point I am making is that at the time of the transfer, it is my understanding that he was not informed that he was being transferred or reassigned for any reasons whatsoever that would have reflected adversely upon him or his prior performance.

Mr. **Jackson**. That is correct. His performance was satisfactory. We were looking for stronger leadership, I think was the point.

Senator **Baucus**. But he was told when he was reassigned that he would be reassigned to work of similar intellectual and psychological effort—that is, it would be full and meaningful work at the same GS level and the same kind of work that he was doing before.

Mr. **Jackson**. Yes. A key element of his reassignment in his job description was independence. In other words, he was to function independently under broad direction from myself. I think it is perhaps in that area that the job did not develop as intended. I guess I would offer for the record that I don't feel he was very aggressive in terms of seeking out, for instance, research that might have application to inspection.

I gave him four assignments that I can recall along that particular line. Recently, our Research and Development Branch Chief identified about 222 research papers over a 3-month period that needed to be at least given a second look. I am saying that is the type of thing that was contained in his job description that had he pursued, would have in effect given him work at that particular level.

Senator **Baucus**. But he was Branch Chief, was he not, for at least 10 years prior to that transfer?

Mr. **Jackson**. There was some reorganization that took place in that, so it is difficult for me to answer that. He was in our organization, but did not necessarily cover, for instance, the NIR infrared program, which is now part of the total program——

Senator **Baucus**. It is my understanding he was Branch Chief for 10 years. And if that is true——

Mr. **Jackson**. He had that title, that's correct.

Senator **Baucus** [continuing]. I am just curious as to why suddenly, after 10 years, there was this transfer, and for reasons that were not communicated at the time to Dr. Watson.

Prior to that transfer, there was a discussion within your office and I guess Mr. Miller's and others, of the mistake that the Federal Grain Inspection Service made with its protein calibration. Correct me if I am wrong, but it is my understanding that Dr. Watson felt that the second lowering—I guess it was by 0.1 percent, and then another tenth——

Mr. **Jackson**. Dr. Watson also disagreed with the initial lowering on April 15. That was part of the testimony, if you'd like me to get that for you.

Senator **Baucus**. Fine. If I may pursue the point—you'll be able to address that later—but as I understand that when Dr. Watson pointed out the mistake the agency wanted to quietly correct it and not send out any public notice that the agency made a mistake. I also understand that it is agency policy whenever changing the protein calibrations, to always send out a notice so that the wheat farmers and the industry know of recalibrations. But in this case, the agency, because it made a mistake, did not want the public to know about the mistake, and that is what upset Dr. Watson.

Would you please address that?

Mr. **Jackson**. Yes, I would be happy to.

I think that you have to look at the overwhelming data that we got from our foreign customers overseas. That data would have sustained probably four- to six-tenths adjustment. We only went with a two-tenths adjustment on April 15 because there were a lot of other things that were in the process of being implemented that we felt might help.

For instance, we were in the process of developing national standard reference samples. Prior to that, we had relied on regional samples. All of these were tied back to the Kjeldahl in Kansas City as the reference method.

Along with that we were putting feeders on grinders to uniformly feed the grain into the grinders. We had some data later that substantiated that if you vary your feed rate into the grinder, it changes the slope of the instrument. That could have been part of the problem, which appeared to be an error in the calibration itself.

Senator **Baucus**. But the main point I want to address is that it was Dr. Watson's strong view that the agency made a mistake in that second lowering from the first two-tenths to the second two-tenths.

Mr. **Jackson**. The first one as well as the second one, and that's in his testimony.

Senator **Baucus**. But my point is——

Mr. **Jackson**. I'm sorry.

Senator **Baucus** [continuing]. Dr. Watson felt the agency made a mistake. The agency at first disagreed, and then it agreed that it made a mistake. Dr. Watson felt it was only fair that the agency follow its usual policy of sending notice of the change in the recalibration back up another couple tenths of a percent.

Mr. JACKSON. I think in the testimony, the Administrator said that if he had it to do over again, he would have done that very thing. I think it still was not a black and white situation.

Senator BAUCUS. Now, why was there not public notice of that change?

Mr. JACKSON. It was a decision made by the Administrator.

Senator BAUCUS. I'm not asking you who made the decision. I am asking you what was the basis for the decision.

Mr. JACKSON. I think—and this is my opinion—I think at that particular point, we were not sure whether or not the calibration was in fact flawed. At that particular time when we made the second change, we were still using the old flawed calibration—if that's what it was.

Senator BAUCUS. You can't have it both ways. Either there was a mistake or there was not a mistake. And I heard you say earlier that there was a mistake. I am therefore asking why was that change not publicized so that the public could know about it?

Mr. JACKSON. For one thing, I don't think we had confidence that a direct change back up two-tenths would correct the problem. And may I go back just a bit to the original decision to change the baseline below the Kjeldahl value in Kansas City by two-tenths of 1 percent. At that particular time—before we made our April 15, we had already mailed out the second set of reference samples from Kansas City with the Kjeldahl values on it. So April 15, we said the policy is to set the NIR's two-tenths below the Kjeldahl. The old original values had already been mailed with the second set of samples. Had we not lowered them two-tenths, we would have then put the NIR's right back to where they were when we made our April 15 decision, within perhaps a week and a half to 2 weeks' time.

That was the scenario that was before us.

Senator BAUCUS. Again, the question—there may be a question whether raising it by two-tenths percent "cures the problem"; but that is independent of the point that still the agency agreed that there was a mistake, and it was proper to raise the calibration back up—whether or not that was sufficient, that at least it was a mistake and it should go up. It could cure part of the problem.

Mr. JACKSON. The decision to, in effect, raise it back up was after we had a chance to look at the two-tenths change and monitor results from the field.

Some of the reasons the results started running higher than the values we fixed on the standard reference samples had to do with changes in procedures. One was the feed rate on the grinder itself. Another one was we put out instructions that more closely controlled the humidity and the grinding procedures, handling procedures, packing procedures; in other words, the whole NIR infrared problem. Many of those could have contributed to our original problems. And there were some other ones—a long list—if I could find them here—I think it was in Mr. Miller's testimony where he ticked off several of these items. There were four or five that he listed.

Senator BAUCUS. I would like to address another question. As I understand it, Dr. Watson was reprimanded for his public testimony indicating that there were mistakes made. Now, is it accurate that he was reprimanded for——

Mr. JACKSON. He was reprimanded for——

Senator BAUCUS [continuing]. For indicating that mistakes were made?

Mr. JACKSON. No. The reprimand—and you are using the term "reprimand"—to me, that means very strong-type action——

Senator BAUCUS. I don't mean—he was criticized. He was criticized.

Mr. JACKSON. OK, "criticized", I'll buy, sir. Yes, he was criticized, and that shows up in his performance standards, for not supporting agency policy, which was a part of his performance standards.

Senator BAUCUS. Now, is it agency policy—and don't misunderstand my words here—is it agency policy not to tell the truth?

Mr. JACKSON. Absolutely not, and my statement says——

Senator BAUCUS. I know, but a mistake was made, and he indicated the mistake was made. Is that not truthful?

Mr. JACKSON. This had to do—and the timing is not clear—but that had to do even with our April 15 change.

Senator BAUCUS. Well, again—and you seem to be confirming that the mistake was made—you seem to be confirming, too, that——

Mr. JACKSON. Well, I'm telling you what Dr. Watson said to the field. In terms of a mistake, I don't think anybody can say there was a mistake made without weighing all of the facts that we did, feeders on the grinders and things that I ticked off before. I think that probably had as much to do with correcting the problem as probably anything out there.

Senator BAUCUS. Well, could you point out statements that Dr. Watson made that you think warrant your criticism?

Mr. JACKSON. That's in my written testimony that I have submitted to you.

Senator BAUCUS. What did he say or do at the public hearing that warrants your criticism to the point of saying that careers could be lost or gone? What did he say that rises to that level?

Mr. JACKSON. In my opinion, he caused the confusion in the field itself that eventually——

Senator BAUCUS. Well, could you point out——

Mr. JACKSON. To me, that does not reflect well on the Department or on the people involved. And I am saying that I think that that type of testimony puts a cloud over everyone's head, including my own.

Senator BAUCUS. Could you right now just tell us what it is he said that would cause careers to be abolished or—I have forgotten the exact words, but to that effect. What did he say?

Mr. JACKSON. I don't believe from the standpoint of losing his position, I said that in that context. I said that his career and Mr. Miller's and mine with this agency are probably over. I think I went on to say that as far as promotions——

Senator BAUCUS. Fine. I'm asking if you could point out and tell us right now, here, today, what he said at that hearing that so warranted such criticism

Mr. JACKSON. OK. "Dr. Watson informed Mr. Williams that the error was made while he was on vacation." Actually, he was in

California. So he is indicating that a particular error was made. And I listed several others in my written testimony to you. On page 355 [3] of the testimony, Dr. Watson says, "Now, in regards to the baseline change, I wanted to make one comment here because I think I made the wrong impression. I disagreed also with the baseline change, on April 15, across the board."

That shows me that he did not in effect support agency policy. The decision was made by the Administrator, and he calls to the field and says, "Look, do this, but it is an error." That can't do any good.

Senator BAUCUS. I thought that you agreed that it was an error.

Mr. JACKSON. That I agreed there was an error?

Senator BAUCUS. Yes. I thought you agreed that the decision to lower that protein calibration was an error.

Mr. JACKSON. I think, sir—I believe, thinking back to the meeting in Washington, the 0.2 percent change was my recommendation—I disagreed with changing it four to six-tenths.

Senator BAUCUS. I'm not asking for your recommendation. I'm asking you whether you agreed with his conclusion that it was an error.

Mr. JACKSON. After the fact, I would still not say that it was error because there were these other things that could have corrected. I think we did the right thing on April 15.

Senator BAUCUS. Are you telling me there is no error?

Mr. JACKSON. Well, when you say "no error," it had to be corrected because there were a number of variables in here.

Senator BAUCUS. Then why was the recalibration moved back up two-tenths of a percent if there was no error?

Mr. JACKSON. That was done over time, and it resulted as a result of the improvements that were made in the procedures and the grinding rate and other operational procedures.

Senator BAUCUS. Well, at the very least, Mr. Jackson, it sounds like either there was an error, and Dr. Watson was correct in pointing that out, or it is a matter of opinion, and therefore he had his own opinion on the same subject, too, which by definition could not be incorrect because various people had different opinions as to whether there was a mistake or not. How can that rise to the level of abolishing careers?

Mr. JACKSON. I didn't ever say I was going to abolish his career, sir.

Senator BAUCUS. But you did say, did you not, that statements like that can have the effect of ruining careers?

Mr. JACKSON. I did say that, sir, yes, sir—and I wish I hadn't made the statement; I think it has become a crutch ever since then for other discussions with Dr. Watson in not carrying out direction, and it keeps rising up as if it was the sole reason. Now, as far as I know, that came up that one time. I think I did verify later on that I said it.

Senator BAUCUS. Changing subjects, I heard you say that there was some question of Dr. Watson's supervisory capability. I have not heard any criticism of his competence as a scientist, of his analysis, of his analytic——

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[3] See hearing of November 10, 1987, "The Impact of Federal Inspection Service Protein Measurement on Wheat Prices," S. Hrg. 100-561.

Mr. JACKSON. He is well-educated, and I think he is a competent scientist.

Senator BAUCUS. If that is the case, then why did not the Department take full advantage of his capabilities? As I understand it, he feels that he was assigned very menial tasks such as counting license plates. I don't know if that is accurate; I'm just telling you that is the testimony, that is what I hear. And I am just curious why, if he is a brilliant man, why did the Department not make best use of those qualities? I mean, why squander taxpayers' money? Why not use him?

Mr. JACKSON. I would like to address the car tag issue. That happened at a time, as I recall, when we were near our quarterly reviews. Secretaries and a lot of the other staff are busy typing. Dr. Watson came by, and I said, "Hey, this has to get over to our landlord. Would you mind doing it?" And he didn't say anything about it. I was very surprised to see that he listed that as one of his major duties under the desk audit.

Now, I think we all occasionally do something that takes maybe 5 or 10 minutes that may not be warranting our particular grade level. But I don't know for whatever reason, other than to make a point, that Dr. Watson put the car tag thing down as an issue.

To get back to the other——

Senator BAUCUS. Yes, let's get back to the basic question. Put the car tags aside. The basic question: Why not make full use of his capabilities?

Mr. JACKSON. I think the opportunity was in his job description and reflected in his desk audit. That it is in his position description to do these types of things, but he asked me continually, "Assign me this, assign me that," and he has not to this day, that I can recall, ever done one literature search other than what I have requested him to do.

I'm saying someone at a grade 14 position I think should be a self-starter, and on his own be able to do things without me giving him every assignment.

Senator BAUCUS. Again, why not grant him these assignment requests? He took the initiative. He said, "Hey, I'd like this job, here," or that job, there, or some other job—why not?

Mr. JACKSON. The only position I know that he has requested is my Deputy's position. That was advertised at one time and was not filled for budgetary reasons, and has never been filled. He has asked on two different occasions for reassignment to that position.

I would point out that if we put him in that Deputy position, it would be putting him back over the same unit from which we felt his leadership was not as strong as it should have been. So it is in effect taking him from an area from which we reassign him and putting him back in charge of it again.

Senator BAUCUS. But again I just don't understand why he is not being used to his capability. It sounds like he has not been.

Mr. JACKSON. I'm saying the potential is there for him to be used at that level, but it is necessary for him to take some initiative.

Senator BAUCUS. What about this last job that he was assigned to, where he feels he is not sufficiently qualified.

Mr. JACKSON. Yes, chemical residues.

Senator BAUCUS. And it is dangerous, I understand, and he is just not trained for that kind of work.

Mr. JACKSON. Well, I think, sir, you ticked off his educational background. His responsibility is to oversee that particular job itself. Now, I think someone with that type of a degree should be able to at least manage the position and get it off the ground.

The other thing I would say—he has said that he is not trained to do it. We asked him to identify needed training some 7, 8 months ago—OK, tell us what training you need—and it has taken him 7, 8 months to finally say, "Okay, I'm ready to go for training now." And he has scheduled three courses. All of those have been approved.

I think he can do the job with sufficient training, and we're willing to provide him that training.

Senator BAUCUS. Well, there are two separate questions here. One question is evaluation and competence of employees; that is a basic question that all supervisors face all the time. That really is not the subject of today's hearing.

The second question, however, is. The second question is the degree to which employees—when they see mistakes, when they see agency work which does not meet performance—should do something about it to correct it. They have the option of pursuing it within the agency, or if those channels don't work, then go outside the agency and, in the public interest, point out shortcomings and failures.

So I would like to ask you about what is USDA's policy with regard to what an employee can and cannot say, publicly say, about the agency's work? I hear you saying that, well, regardless of whether the agency made a mistake, regardless of whether the agency screwed up or is wasting money or not, if it is agency policy not to divulge it, the employee should not divulge the information, and if he does, his career could be ruined.

Mr. JACKSON. I think the point is that the whistleblower line is available to someone. I don't believe a proper way is, when a decision has been made to try to upright a protein program where we were threatened with lack of foreign markets that we might not ever get back, I don't think the proper forum is to call someone out in the field and say, "Do this, but it is a mistake." That does little in effect, to help with the confidence in implementing changes that were necessary to correct the program and get us back in the marketing of grain.

More appropriate, I think if he disagreed with it, at that point in time he should have called the whistleblower line and not in effect gone to the industry and said that there was a problem.

Senator BAUCUS. But I'm referring more to his testimony at the congressional hearing where he indicated that mistakes were made and he was ordered to take certain action by his superiors.

Is it agency policy to direct its employees never to publicly indicate when an agency makes a mistake?

Mr. JACKSON. I don't believe in this particular case that it is fair to wait until after something has gone by from April 3 to November and then form your opinions at that time, and I don't think necessarily Dr. Watson did.

But I would say he was in charge of that program for 8 months, during which it appears that the proteins were not running correctly during that time period. He had the opportunity to identify the problems before April 15 and did not. My question is that he had all of this knowledge on November 2 or whatever, but at the time of April 15, he had not made any recommendation as far as how to correct the program.

Senator BAUCUS. What is your agency's policy with respect to employees who do, in your opinion, improperly divulge information? What is the normal course that you would take in that case?

Mr. JACKSON. I think we are still wrestling over whether or not this was improper, I mean, whether there was an error made or not——

Senator BAUCUS. But I am asking about when there is error made. What is the normal course for the agency to take?

Mr. JACKSON. Well, I'm not sure I understand your question.

Senator BAUCUS. Let's assume you have determined that an employee improperly divulged information with respect to your agency's jurisdiction, and you felt that remedial action was necessary. What would you do?

Mr. JACKSON. The first thing I would do would be to refer it to our Human Resources Division office and see whether any action that I might propose would be proper.

Senator BAUCUS. But if action were warranted, what would it be?

Mr. JACKSON. Again, it depends on the seriousness of the action.

Senator BAUCUS. Let's say it is moderately serious.

Mr. JACKSON. Very subjective, sir.

Senator BAUCUS. Well, what might you do?

Mr. JACKSON. At the very least I would tell the employee that I disagreed with what he had done.

Senator BAUCUS. All right. What else might you do?

Mr. JACKSON. Advise him not to do it again, as a part of that.

Senator BAUCUS. Would there be any action to transfer him?

Mr. JACKSON. No, sir.

Senator BAUCUS. None whatsoever.

Mr. JACKSON. Not on the basis of one incident.

Senator BAUCUS. In this case, what did you tell Dr. Watson?

Mr. JACKSON. In regard to his reassignment to Washington?

Senator BAUCUS. No, no. I assume you felt he acted improperly, because you said his testimony could mean the end of careers, so——

Mr. JACKSON. I pointed out to him that his particular action did not support agency policy.

Senator BAUCUS. Anything else?

Mr. JACKSON. No, sir.

Mr. GALLIART. Mr. Chairman it is not the policy of Federal Grain Inspection Service to admonish an employee because he said this or that.

Senator BAUCUS. Well, that's how it looks.

Mr. GALLIART. I appreciate that. You have been around this business for many years, and so have I. You cannot tell an employee that he can or cannot do something, or can or cannot say something. It is not the policy of the agency to deliberately abuse somebody in any form because they made some comment, whether it is to the industry or it is to another agency or to whomever, and certainly not to the Congress.

I must repeat what I said earlier in my testimony. I was here and heard the testimony. There were times that Dr. Watson defended Mr. Miller in some of the comments that he made. I did not leave that hearing with the idea that Dr. Watson said anything that would involve some kind of retaliation.

Senator BAUCUS. Then why was he transferred to all these jobs for which there is no work to do?

Mr. GALLIART. In the first place, he was transferred from the Branch Chief position to Assistant to the Director before the testimony.

Senator BAUCUS. And given practically no work.

Mr. GALLIART. Well, this part Mr. Jackson has addressed.

Senator BAUCUS. But not very convincingly.

Mr. GALLIART. There isn't any question that Dr. Watson is a very gifted man with regard to his technical expertise. One of the problems—major problems—that the agency has had with Dr. Watson's work is his ability to supervise. It goes back many, many years.

I don't know that anyone has ever questioned his technical expertise. It is most regrettable that if he wasn't completely and absolutely busy working on projects, that is unfortunate.

Senator BAUCUS. OK. This could go on forever, and I don't mean to indulge in the details here. This is not the time or the opportunity, and this forum is not suited for that kind of an examination. And Dr. Watson will have an opportunity to testify later today.

But before turning to Dr. Watson and others, is there anything that you want to say now that you haven't already said in anticipating what he or anyone on the next panel might say? I am just giving you an opportunity—and I know it is difficult because you haven't heard them yet, but probably in the back of your mind you have some ideas of what might be coming up, so I would like to give you an opportunity to——

Mr. GALLIART. Mr. Chairman, I would say this. In your opening comments, the allegation that we are in some way involved in a violation of the Whistleblower Act is most distressful to me. I have been in this agency for more years than I care to tell, and I have never heard that kind of comment before.

I believe the agency has treated its people fairly. It has given them an opportunity to be what they can be. If we have had a problem in any sense, we turn that problem over to the professionals to handle—complaints, personnel matters were handled in what I consider to be a fair way. Sometimes the agency was admonished for what they did or didn't do, and other times the agency action was sustained.

It is just that I say to you with great emphasis that it distresses me deeply to think that this agency has been accused of something as serious as a violation of the Whistleblower Act. I assure you that that is not the intent in any way, fashion or form of the agency and upper management.

Senator BAUCUS. I appreciate that. I must say, though, that that is a statement that a witness on the next panel is going to make—that is, that there are an inordinately high number of whistleblower cases with the USDA. I don't know whether that is true or not; that is just his statement.

With respect to the early statement of Mr. Foltz, that there are certain remedies under the Whistleblower Act, it is my understanding that Dr. Watson did go to the Office of Inspector General, which I believe is one of the possible remedies under the act, and he was told that the backlog is so great that it would take a couple or 3 years to get to his case, and that he should go to Congress to see if there is some other remedy.

Because Dr. Watson is getting closer to retirement, and 2 or 3 years is too long. So that is one reason why we are here.

Mr. FOLTZ. I was not aware of that, Mr. Chairman. I would like to comment, though, in terms of the importance of the assignments that he has been given more recently and whether that was work commensurate with his level of ability.

Senator BAUCUS. All right.

Mr. FOLTZ. Although I was not here when that assignment was made with regard to the coordination of the Soybean, Protein and Oil Project, I can tell you that that is a very important project. It is considered important in the eyes of our producers and our processors and our foreign customers, and I would not want this hearing to indicate that that was anything less than one of our top projects at the time, and the work that came out of that project continues to be an important part of our grain quality effort with regard to oilseeds.

Secondly, on the more recent assignment, I was just arriving when that assignment was being formulated—there were two assignments, really, one with regard to procurement of new aflatoxin test kits. That was obviously a very critical matter. It came to the attention of the whole country in 1988. It may be something we'll face again this year. It is a very important project, and no one who is qualified could say that it was not important work.

Senator BAUCUS. Was he downgraded, though, in his position to a lower GS level?

Mr. JACKSON. No, sir.

Senator BAUCUS. He was still a GS-14?

Mr. JACKSON. Still a GS-14, sir.

Mr. FOLTZ. There was never a change in grade. The other assignment, to determine chemical residues in grain—with all the food safety concerns that we hear about daily and read almost daily, again, nothing could be higher on our list of priorities. So the importance of those jobs——

Senator BAUCUS. Careful—nothing higher? That's a pretty strong statement.

Mr. FOLTZ. We have lots of priorities.

Senator BAUCUS. OK.

Mr. FOLTZ. Those are very important assignments and I would like to emphasize to you in terms of the work we have to do that we do take those jobs seriously, and we are looking for talented people to help us solve those problems.

Senator BAUCUS. OK.

Mr. ROBERTSON. Mr. Chairman, I would like to just make one remark.

Senator BAUCUS. Sure.

Mr. ROBERTSON. I too was unaware of him contacting the Office of Inspector General regarding any kind of a whistleblower. I am not sure at what level his contact was with the Office of Inspector General. However, in my dealings with the OIG and the Department, I would be quite surprised that they would refer an individual to Congress in lieu of going to the Office of Special Counsel. The Office of Special Counsel is a specifically designated body created by the Civil Service Reform Act for employees to take their issues to.

To the best of my knowledge, the Office of Special Counsel has not been contacted.

I can also comment from previous experiences with the Office of Special Counsel that they are very, very prompt in responding to whistleblower complaints. In fact, I think they are mandated to do so.

Again, I don't know what level of contact he made, but I would be surprised that the Office of Special Counsel was not a reference for him.

Senator BAUCUS. Well, before I move to the next panel, let me just make a couple of points.

The evidence certainly raises more than a question as to what happened here. Certainly, there is a real strong argument that some reprisals were taken against Dr. Watson because he pointed out some shortcomings within the agency.

Dr. Watson may be an irascible person, he may be difficult; but whether or not that is true, whether or not that is the case—I have no judgment on that—that is no excuse for taking retribution on or reprisals against an employee for pointing out shortcomings within the agency.

We are all public servants. I self-destruct every 6 years, and it gives people an opportunity to either bring me back here or send someone else back here. Most public officials in the Government just don't self-destruct; they are there. They are evaluated, and they can be reassigned and so on and so forth. But there is an extra duty placed upon public employees who are not elected officials. In my judgment they must go the extra mile to serve people and be willing to take the medicine, to be criticized within the agency, and to even divulge mistakes more publicly than they would like to, because that is a good disinfectant. The sunshine, I think, is a very good disinfectant and helps purify, if you will, or keep an agency performing as well as it possibly can.

I very strongly urge the Department of Agriculture to go farther than it appears to have gone in listening to proper complaints in the agency and also giving people their full due in trying to correct the substance of mistakes made and not indulge in personalities.

Now, the evidence in this case is not crystal-clear, but there is certainly much evidence that the Department probably, in retrospect and with the benefit of 20-20 hindsight, would have taken different action. And I suggest that that different action would have been to not be so critical of Dr. Watson personally, but to in all likelihood give him more responsibilities and more duties that are in fact commensurate with his abilities.

I urge the Department, not only the Federal Grain Inspection Service, and not only the USDA, but the entire Federal bureaucracy, to go overboard and take their medicine, to do what is right. Admit mistakes, 'fess up, correct them, and get on with it. But don't take any action out personally on the employees. It is very much a disservice to our people when that happens.

Thank you very much.

Our next panel includes Dr. Watson; in addition, Larry McDonald, a grain marketing specialist with the USDA and Federal Grain Inspection Service Technical Center in Kansas City; Mr. Ronald Bicsak, a chemist, also in the same Technical Center in Kansas City; and Thomas Devine, Legal Director for the Government Accountability Project in Washington, DC.

Dr. Watson, your hour has arrived. Proceed.

STATEMENT OF CLIFFORD A. WATSON, ASSISTANT TO THE DIRECTOR, QUALITY ASSURANCE AND RESEARCH DIVISION, FEDERAL GRAIN INSPECTION SERVICE TECHNICAL CENTER, U.S. DEPARTMENT OF AGRICULTURE, KANSAS CITY, MO

Dr. WATSON. Thank you, Senator Baucus, and other members of the committee.

I am Dr. Watson, Assistant to the Director, Quality Assurance and Research Division, Federal Grain Inspection Service.

First, I want to express concern for my colleagues who are here today to testify. I sincerely hope that they will not encounter the same retaliation and harassment that I have endured the past 3 years because of my testimony before the joint hearing of the Senate-House Agriculture Subcommittees on November 10, 1987.

What we are primarily concerned with at this hearing today is preserving and strengthening the integrity of our governmental system by assuring every Federal employee the right to speak up and be heard, that so-called "whistleblowing," is maintained, preserved and enforced, as given to them under the law.

More close at hand, we must assure that the integrity of our Federal grain inspection system is impeccable at all times. We are not concerned with my performance and performance rating as discussed previously here today. Our grain inspection system is an excellent one. No other country has a finer system, and we can all be proud of this.

However, I hope that as a result of this hearing we have a stronger system in which every employee can carry out the responsibilities without fear of retaliation. FGIS managers cannot be allowed to violate regulations and the law by harassing and retaliating against employees.

In the summer of 1987, there was a wheat protein controversy that focused in Montana. The basic question centered around the accuracy of protein results for Hard Red Spring wheat because of FGIS changing the baseline value. As Chief, Quality Control Branch at the time, I was in charge of the Wheat Protein Program for FGIS.

I disagreed with the Administrator on some of his decisions during this controversy. For the record, I was proven to be correct.

Nevertheless, I was reassigned from Chief, Quality Control Branch to Assistant Director, Standardization Division. I was given two reasons for being reassigned—one, Mr. Jackson told me that

Dr. Kenneth Gilles, Assistant Secretary for Marketing and Inspection Services, wanted me assigned to a position in Washington, DC in hopes I would resign. Second, several months later, I was told by Mr. Miller, Administrator, FGIS, that I was reassigned because I did not support him on the decisions he made during the protein controversy.

However, the record shows I did support every decision he made, even though some I disagreed with.

I was reassigned in August of 1987. I encountered no problems in my new position until after November 10, 1987. Because of the importance of protein premiums to Montana wheat farmers and their concern over the several changes in protein baseline values, a joint Senate-House subcommittee hearing was held on November 10. I was requested to testify at this hearing. My testimony was not favorable to FGIS upper management because it placed the blame on the wheat protein problems where it should be: FGIS upper management.

After the hearing I was advised by Gail Jackson, my immediate supervisor, that because of my testimony, my career with FGIS was through, or would be adversely affected. Indeed, this is exactly what happened.

My work assignments were reduced so severely that an official audit of my position resulted in it being abolished. There were not even enough work assignments to classify the position.

An attempt was made to transfer me to Washington, DC. However, this decision was reversed after I submitted requested medical documentation. Therefore, I was reassigned back to the same position that had been abolished. In this position since about October 1988 I have been detailed for two 1-year periods to various projects. Even so, my work assignments during these 2 years have kept me busy on the average about 15–20 percent of the time. This, in my particular case, I consider severe harassment and retaliation.

Other subtle harassment and retaliatory measures include banning me from all staff meetings; removing me from committees; denying me attendance at professional meetings; pressure to conduct research for which I am not qualified and under unsafe laboratory conditions—and the list goes on.

Clear is the pattern since the hearing on November 10, 1987, is that of retaliation and harassment. My written statement provides more detail regarding retaliation and harassment of me, violation of certain regulations, pressure exerted on other employees and/or official agencies to relax the official U.S. grain standards, and other related information pertinent to the case. Time does not permit me to review these in detail with you.

In closing let me say again that the United States has a grain inspection system second to none in the world, one we can all be proud of regardless if we are a producer, grain handler, processor, or an employee of the system.

However, there are severe weaknesses in the management of the system. I hope this hearing today sets in motion decisive action to correct those weaknesses on a sustained, long-term basis. This must be done if we are to preserve the integrity of our grain inspection system that is so vital to marketing of our grain.

I want to commend you and your staff for the tremendous amount of work and effort devoted to the case. Two of your staff members went beyond the call of duty. They are Ms. Tamara McCann and Mrs. Bernice Olson of the Great Falls office. They indeed are to be commended.

One final comment. I am proud to have been involved as a professional scientist and manager the past 33 years, working toward improving our grain quality and inspection methods. From establishing and directing the Montana Wheat Quality Laboratory in Montana State University, Bozeman, to directing the design, building and organizational development of the U.S. Grain Marketing Research Laboratory, USDA, Manhattan, Kansas, to developing and organizing both the Research and Development and the Quality Control branches in FGIS, to my over 100 scientific publications, it is a career which I am proud of—just as proud as you, Ron Bicsak, my colleague here, members of your staff, and all Montanans are of our great native State of Montana.

Thank you.

Senator BAUCUS. Thank you, Dr. Watson.

[The prepared statement of Dr. Watson follows:]

USDA-FGIS Technical Center
Quality Assurance & Research
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P. O. Box 20285
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September 30, 1990

Senator Max Baucus
United States Senate
Washington, D. C. 20510

Honorable Senator Max Baucus:

Thank you Senator Baucus for giving me the opportunity to present this statement related to the FGIS wheat protein controversy in 1987. My statement addresses the removal of me as Chief, Quality Control Branch; retaliation taken against me by FGIS managers because of my testimony before the joint Senate-House Agriculture Subcommittee on November 10, 1987; and other related matters.

Preserving the integrity of our federal system is vital to a strong and efficient government and to our case at hand, the federal grain inspection system. We can not tolerate the retaliation of federal employees who provide honest and truthful testimony before congress by request because it jeopardizes the integrity of our system. A brief background about the FGIS protein controversy in 1987 for informational purposes is in order.

On April 15, 1987 the Federal Grain Inspection Service (FGIS) lowered the protein bias on near infrared (NIR) instruments for Hard Red Spring Wheat (HRS) by 0.2% on a nationwide basis. The Administrator, Kirk Miller, made this decision after consultation with some of his staff. As a matter of record I was Chief, Quality Control Branch, and in charge of the wheat protein program for the Agency at the time. The decision to lower the bias by 0.2% was made without myconsultation or input. I was in California at the time conducting a training course on protein.

On May 4, 1987, several years after I made my first recommendation to do so, the Agency began to use national wheat protein reference samples. Prior to this time regional or local reference samples were used. At the same time the Administrator decided to lower the bias 0.2% protein on these samples. Again this was done without my consultation. I disagreed with this decision and so advised Gail Jackson, myimmediate supervisor. He advised me that he also disagreed with the decision. Even though I disagreed with the decision, I supported the Administroator's decision. In fact, I requested, and Mr. Jackson authorized me tosend a notice to all FGIS field offices instructing them to lower the HRS NIR protein on the national reference samples by0.2%.

Because of confusion created bylowering the protein bias of the national reference samples by0.2%, the Administrator held a meeting in Washington, D.C. on June 3, 1987. At this meeting it was decided that the protein bias on the national reference samples should be raised by 0.2% to correct the earlier mistake. This was to be done in two, 0.1% increments. Instructions were to be given by phone only in hopes that the necessary correction could be kept from the grain industries. I disagreed with this latter decision and recommended the 0.2% increase be done at one time with a written notice admitting our error. However, I supported the Administrator's decision and requested Ron Bicsak, my assistant, to make the calls to the field offices instructing them to increase the protein bias on the national reference samples by 0.1%.

This caused complete confusion in field offices and official agencies. Some official agencies refused to make the 0.1% correction without a written notice. The grain industry, including the Montan Grain Growers, heard about the confusion and made inquires into the matter. Wheat protein is a major marketing concern, often bringing high premiums, to Montana farmers. Therefore, because of the several protein bias changes made on HRS, the Montana Grain Growers were concerned about monetary losses to Montana wheat growers. This all cumulated in a joint Senate-House Agricultural subcommittee hearing on the matter on November 10, 1987. The hearing was chaired by Senator John Melcher. I was requested to testify at this hearing.

My testimony at the hearing was not favorable to FGIS upper management. I testified that for several years (dating back to 1982) I had recommended the use of national reference samples, updating NIR instrument calibrations yearly, additional staff, efficient use of automatic data processing, direct monitoring of all field locations byQCB to eliminate a layering effect, and one manager in charge. My recommendations were not accepted and sometimes apposed. It was not until after the November 10, 1987 hearing did FGIS by and large accept all my recommendations and made a concerted effort to implement them.

Prior to the November 10, 1987 hearing I was removed (August, 1987) as Chief, QCB and reassigned as Assistant to the Director, Standardization Division. (Note: Gail Jackson originallyadvised me I was being reassigned to the position of Assistant Director, not Assistant to the Director, which is a much lower position in terms of rank.) I was told by Gail Jackson, my immediate supervisor, that originally Dr. Kenneth Gilles,_Assistant Secretary, Marketing and Inspection Services, had directed him to reassign me to a position in Washington, D.C. in hopes that I would retire instead. (Note: Up to this time Gail Jackson had repeatedlytold me I was doing a good to excellent job and he had no problems with me. He must said keep up the good work and keep him informed.) Gail Jackson advised me this option was still available, however, he hoped I would accept the position as Assistant Director. Gail Jackson advised me that in my new position I would become an integral and important member of his staff. I would be in a position where there was considerable and much needed work to be done.

It was not until several months later in a meeting with Kirk Miller and Gail Jackson was I told by Miller the reason I was removed as Chief, QCB was because I did not support his decision on the biasing of the national reference samples. The record shows I did support his decisions but I did not agree with them. At no time did I not carry out Miller's instructions.

I did not question the reassignment because Jackson and I had always had good rapport and trust. Indeed I was given plenty work in my new assignment, enjoyed my work, and did not complain.

Immediately after the November 10, 1987 hearing I was advised byJackson that because of my unfavorable testimony towards FGIS upper management my career with FGIS was through or certainly adversely affected. I was again reminded of this by Jackson on December 21, 1987. This was followed by cutting off nearlyall work assignments to the point I was busy about 15 percent of the time. Many of my assignments were mediocre in nature. I repeatedly requested additional work assignments from Jackson, including by memo on January 8, 1988; however, he refused to make any. Finally he requested a desk audit of my position by a classification officer. (This is an on cite investigation of the position an employee holds to determine its need and classification level.) As expected, the classification officer determined there was not even enough work being assigned to me to classify the position and recommended it be abolished. Jackson accepted the recommendation and requested my position be abolished. This was only six months after he certified the position was needed. A supervisor must certify that "this is an accurate statement of the major duties and responsibilities of the position and its organizational relationships and that the position is necessary to carry out Government functions for which I am responsible". Subsequently I received a letter from Dave Galliart, Deputy Administrator, FGIS, notifying me that my position was abolished and I was being reassigned to a position in Washington, D.C. Transfer of an employee against his wishes is considered an adverse action. Therefore, I was given the choice of reassignment, resigning, or retiring. I objected to the reassignment for medical reasons and submitted requested medical information to support same. As a result I was reassigned (October 31, 1988) to the same position which previously had been abolished, Assistant to the Director. (Note: There is some evidence that a bonafide GM-14 position did not exist in Washington, D.C. which gives some validity upper management hoped I would resign instead of transfer.)

During the entire scenario described above the Agency did not provide "good cause" for removing me as Branch Chief. The standard policy in the Department and Agency is that if an employee is doing a good job in a position they are not reassigned unless they request to be reassigned or there is shown to be "good cause" for reassignment. It is obvious that mywork assignments were reduced to virtuallynothing after the November 10, 1987 hearing in order that myposition could be abolished and I be reassigned to Washington, D.C. This clearly is blatant retaliation for my unfavorable testimony. How could a manager with 30 years experience certify that a position is needed and necessary to carry out government functions and only six months later request it be abolished? Obviously, there was a clear falsification of the records and/or direct premeditated retaliation.

Each year, every employee is provided performance elements and standards under which they are evaluated by their supervisor. In September, 1988, on performance element No. 5 John Halverson, Deputy Director, Standardization Division, and rating officer, gave me a "does not meet fully successful" rating (less than satisfactoryand lowest rating possible). One reason given was "Testimony indicating disagreement with agency policywas communicated outside the agency". John Halverson, during our discussion of the evaluation, emphasized that my testimony on November 10, 1987 was a reason for the low rating. This is clearly documented evidence of retaliation. It should be noted that Halverson did recognize the outstanding work I had done in developing documents to reorganize the Standardization and Field Management Divisions and gave me an appropriate rating accordingly.

After my reassignment on October 31, 1988 I was detailed to a soybean project plus certain other assignments. The project and assignments kept me busy about 20 percent of the time and most assignments were below my grade level of GM-14. I repeatedly advised Gail Jackson of my lack of work, requested additional work, and made recommendations accordingly. Jackson acknowledged on several occasions that he knew I was not busy a great deal of the time and that many of my assignments were not commensurate with my grade. He did not, for one reason or another, accept my request and/or recommendations for additional work and stated he did not understand what was wrong with not being busy or not working at my grade level. He said it was commendable that I wanted work assignments commensurate with my grade but if they were not he did not understand the problem. In fact, he said he did not understand why I did not leave well enough alone and just ride it out. He had made this same statement before and to others. On one occasion he said he had not been in a position to give me appropriate work assignments.

It is common knowledge that it is extremely stressful for a person who has worked hard and kept busyall his life and then find himself in a position with little or nothing to do. This situation pertains to my case. Up to November 10, 1987 I worked long, hard and busy hours. Then to find myself with nothing to do most of the time was extremely stressful. Sitting in a 10 x 10 room with no windows day after day with virtuallynothing to do is without a doubt direct reprisal for my November 10, 1987 testimony. There was adequate opportunity and work assignments which Jackson could have given me to keep me busy but he chose not tobecause retaliation was in order.

The detail on soybeans to which I was assigned on October 31, 1988expired October 31, 1989 with the completion of the detail and the project. Jackson previously had agreed that I would work in my regular established position as Assistant to the Director at the completion of the detail. However, instead he detailed me to other projects for one year. The Federal Personnel Manual (FPM Letter 300-32) states "details may be extended by an agency, in 120 day increments, up to a maximum of one year".

Clearly, detailing me for two successive one year periods is in violation of the regulations. I do not know of any other employee who has ever been detailed for this long. In addition, I was not qualified to conduct the assigned project on chemical residues and the agency did not have the proper physical facilities.

Regarding the chemical residue project, I was pressured from the outset to get the research going. I was advised it was a highly visible project with considerable attention being given to it by congress and others. Therefore, research progress had to be shown immediately. In fact, I was notified of my assignment on a Friday and the next Monday I was asked to make arrangements for training on an instrument. I conducted a literature search on the project including personal interviews with several well known specialists. A report was made which emphasized among other things my lack of qualifications to conduct the research and our lack of proper facilities. Explosion proof fume hoods and laboratory were a must because diethyl ether (one of our most explosive chemicals) is used in the process. Even this did not satisfy Jackson and others. It was not until after a meeting with specialists from FDA and an on-cite eeview of our facilities by an industrial hygienist was Jackson convinced explosion proof hoods were needed. At that time, over 6 months ago. action was taken to provide explosion proof hoods; however, they are still not available.

It is obvious the above detail, pressure to conduct research under conditions that could endanger my health or life (and of others) was another form of retaliation.

The projects assigned to me in November, 1989 to date have not kept me busy. In addition, none are commensurate with my grade level. The agency has stated assignments were given to me to accomodate my health. This not true. My medical records do not recommend that I not be assigned full time work. Also, the agency claims I have not shown that my position and work assignments since October 1988 do not classify my position as as GM-14. There has been virtually no change in my position description and/or work assignments since my previous position was abolished because of lack of work assignments. Therefore, it is obvious my position classification would not h;ave changed. The agency has ignored the statement made by the classification officer, who audited my position in 1988. Mr. Reynolds stated that for my position to be a GM-14 "management would need to grant the incumbent more responsibility or commitment authority or long-term ownership of some important and highly complex division function(s)". Therefore, it is obvious the agency never did intend to commit my position to a GM-14.

Other suttle forms of retaliation has taken place over the past two years plus. This includes denying my attendance at a professional meeting even though I was chairman of a symposium that I had organized and I was chairman of a technical committee. I had never in my entire career been denied attendance at a professional meeting when I was this involved. In addition, action was taken to have me removed as chairman of the technical committee and replaced by Dr. Don Koeltzow, Chief, Research and Development Branch, FGIS. This is not only a form of retaliation but unprofessional.

Other suttle retaliatory actions include banning me from all staff meetings, removing me from projects and committees, and not informing me of certain activities. One inciddnt regarding the latter was particularly disturbing to me was when I was not notified of John Halverson's funderal, former Deputy Director, with whom I had been associated on a professional and personal basis for over 20 years. Administrative leave was given to everyone at the Technical Center to attend the funeral except I was not even notified. This was personal retaliation.

To focus more closely on my removal as branch chief in 1987, I reference other cases of similar action by the agency; more specifically Kirk Miller, Administrator.

Larry McDonald, former Manager, Kansas City Field Office, found and documented violations of the U. S. Grain Standards Act in the State of Kansas. He was advised by his supervisor to document and report all such violations which he did. However, when he requested that the violations be investigated he was summarily removed and reassigned to the FGIS Technical Center as a Grain Marketing Specialist. This was done because of pressure exercised by the State of Kansas.

Complaints were made by industry against one of our best official agencies because they were following the U. S. Grain Standards to closely. Instead of backing the official agency, Kirk Miller did everything he could to suspend the license of the agency. Again, he took this action to satisfy industry.

Last year, Kirk Miller put extra ordinary pressure on Gail Jackson andmore so on Arnie Class, Chairman, Board of Appeals and Review, to relax the line on the official U. S. Standards for soybeans. He went so far as to have Class investigated. I was personally told by Class on several occasions that he was sure Miller was going to remove him as Chairman. In fact, at one time Class was seriously considering retaining a lawyer. Jackson also told me on several occasions he did not know if he would survive the ordeal.

I mention the above three cases to point out that my removal as Chief, Quality Control Branch, because I disagreed with Miller, was his method of operation. Removing a scientist and manager for expressing his professional expert opinion in his area of responsibilties or for enforcing the U. S. grain standards can not be tolerated. It jeopardizes the federal grain inspection system and the heart of ourgrain marketing system.

I want to point out that I am not the only FGIS employ given less than full work and not commensurate with his grade level. Les Malone, Assistant to the Administrator, a SES employ making upwards of $100,000 per year, has for several years been given less than full time work with many assignments of a mediocre nature. Certainly his work assignments have not been commensurate with a SES level position.

All federal managers and supervisors have the responsibility to assure that government funds and employees are utilized efficiently and effectively. FGIS management has knowingly neglected their responsibilities in under utilizing Les Malone and I. This is a waste of human resources and government funds.

In addition to the above, I previously have provided you with many documents which you should consider in support of my case.

In summary, there is more than ample evidenceto show that retaliatory measures have been taken against be because (1) I disagreed with Kirk Miller, Administrator, FGIS on a scientific wheat protein issue which I was later shown to be correct and (2) of my honest and truthful testimony given before the joint Senate-House Agricultural subcommitteeon November 10, 1987. Retaliatory measures include

(a) removing me as Chief, Quality Control Branch without just cause,
(b) reducing my work assignments to virtually nothing resulting in abolishing my position,
(c) attempting to transfer me to Washington, D. C., an adverse action,
(d) giving me work assignments since November 10, 1987 that have kept me busy about 15-20% of the time which is, in my case severe harassment,
(e) pressuring me into conducting research for which I am not qualified and in facilities that were unsafe,
(f) banning me from essentially all meetings and committees,
(g) denying attendance at professional meetings, and
(h) other suttle harassment techniques.

Harassment and retaliation of federal employees for giving professional scientific advise in their area of responsibilities and expertise and for testifying by request before the U. S. Senate and House can not be tolerated. To do so jeopardizes our entire system and in this particular case, the integrity of the federal grain inspection system. A system of extreme importance to our entire grain industry.

Sincerely,

Clifford A. Watson

Clifford A. Watson,
Assistant to the Director

Senator BAUCUS. Mr. McDonald.

STATEMENT OF LARRY McDONALD, GRAIN MARKETING SPECIALIST, FEDERAL GRAIN INSPECTION SERVICE TECHNICAL CENTER, U.S. DEPARTMENT OF AGRICULTURE, KANSAS CITY, MO

Mr. McDONALD. Thank you for inviting my testimony.

My name is Larry McDonald. I serve as a Grain Marketing Specialist for Federal Grain Inspection Service in Kansas City, Missouri.

I want to state the facts and my opinions based on information available to me and to the best of my recollection.

From 1980 through 1987, I was the FGIS field office manager of the Kansas City Field Office. My major responsibility was to supervise and regulate the official inspection of grain by the State of Missouri in the western half of Missouri and the State of Kansas in the eastern third of Kansas. Both States are officially designated to perform this work for the U.S. Department of Agriculture. I accomplished my work through a staff of about five.

Soon after beginning my tenure there, my staff began reporting to me a significant number of irregularities by the State of Kansas inspection department. Among the more significant of the irregularities was the falsification of official grain inspection certificates. These acts are subject to criminal, civil, and/or administrative penalties. I was responsible for communicating these actions to higher level managers through appropriate channels, which I did. I was also responsible for implementing corrective actions. Legal enforcement actions were to be taken at higher levels of the agency.

I basically encountered little interest in pursuing any penalties for these apparent violations at higher levels of Federal Grain Inspection Service. I believe this caused a further deterioration of the State of Kansas' willingness to comply with the United States Grain Standards Act and regulations.

In 1985, my staff noted that State of Kansas inspectors were failing to perform stowage examinations prior to the loading of railroad hopper cars with grain. Our regulations state that each railroad car shall be physically observed to verify that it is clean and free from previous cargo prior to any official inspection of grain being loaded into it. Railroad hopper cars carry many types of cargo. Oftentimes, the cars can carry residues of fertilizer, animal feeds, glass, and unknown foreign substances that may or may not be harmful to animals or humans. Quite often, there is residue from the previous grain cargo that has become rotten because of rainfall and infestation. This old grain would be a prime candidate for introducing molds and toxins into our food chain unnecessarily.

The inspectors were not performing these examinations, yet recording that they did on official records. The buyers of this grain would receive official grain inspection certificates with a statement saying each car was officially inspected and thus assume that they had purchased grain which was in hopper cars that were clean.

This situation was reported to the management of FGIS and the Kansas State Grain Inspection Department. The State inspectors signed a statement saying they knew these activities were wrong and that they would follow correct procedures in the future. Several months later, one of my staff again notified me that the problems had not been corrected and were still occurring. The State inspectors were falsely stating on official work records that they had verified the cleanliness of each hopper car, when in fact they had not. The involved employees further suggested to me and one of my staff that management knew this was happening and condoned their actions. All of this was reported to FGIS management. My immediate supervisor later told me that the Kansas Bureau of Investigation investigated this problem and administered polygraphs to employees involved. He also told me that the investigation was inexplicably stopped before reaching the higher levels of the Kansas Grain Inspection Department.

A few months later, an FGIS employee again reported to me that Kansas inspectors were falsely stating they had verified the cleanliness of hopper cars. Again, the situation was communicated to higher levels of FGIS. Through all of this, I am not aware of any prosecution or penalties for the acts I have specified.

Because of these and other violations, the Administrator of the Federal Grain Inspection Service scheduled a meeting with the Governor of the State of Kansas to discuss the problems. During the meeting, the Governor never acknowledged any problems, only that they were proud of their department and that they thought they were one of the finest. Very few in FGIS would agree with these statements.

In a private meeting with the Administrator, he suggested that I must improve the working relationship with the management of the Kansas Grain Inspection Department. He implied that I should go easier on them and not be so "gung ho." I pointed out that I also supervised the State of Missouri and had very few problems with their operation and perhaps it was the State of Kansas, and not me, that was the problem.

Later in 1987, my second-level supervisor called me into his office in Washington, DC and told me I was being involuntarily detailed to our Quality Assurance and Research Division for 60 days. He told me to try this new position and consider requesting reassignment if I liked it. When I asked him if I did not wish to be reassigned, would he reassign me anyway, he replied that he would not rule that out. I served my 60 days and even asked for an extension of the detail. Toward the end of my extension, I notified my field office that I was returning to work. This apparently got back to the State of Kansas, who had apparently been working behind my back with the Administrator to have me transferred. A responsible official within the State of Kansas Government had quietly tipped me months before that this was going on.

I received a call from the field office manager in Pasadena who asked about my situation. I told him that I was going back to my field office, I believed, the following week. He said he doubted it. I asked why. He said that the management from the State of Kansas had called the Administrator in Pasadena and that he thought I would not be going back to the field office. Within several days, I received notice that I was being involuntarily reassigned to the Quality Assurance and Research Division. I called the Administrator and asked him about this. He said the decision to reassign me was agreed to by him and my second-level supervisor, who had threatened to reassign me in the first place. It should be noted that I provided damaging testimony against this second-level supervisor at an age discrimination trial which the Department lost.

I believe that these actions were at best unethical and at worst a violation of my rights. The message to my coworkers was clear: Do your job well, but when politics gets into it, back off. I have had standards of performance which I have exceeded for the last 12 years. I think that my transfer was politically motivated on the part of the FGIS Administrator in a deal made with Kansas managers.

More than one responsible person in our FGIS headquarters told me after this incident that if any other official inspection agency had done the things that I had reported, they would have lost their designation, and there is evidence of this. This is a clear violation of Department ethics, and perhaps illegal.

What I have provided is only a summary of my situation. There are far more details than I can provide in the allotted time.

I became acquainted with Dr. Watson after my transfer to Quality Assurance and Research Division in 1988. Dr. Watson was helpful and supportive of me in my attempts to establish quality assurance programs. I have great respect for his career accomplishments and his knowledge of quality control. I know of no negative issues relating to his job performance.

Many persons were aware of the fact that Dr. Watson's testimony before the joint agricultural hearing was not favorable to FGIS. Dr. Watson told me that after his testimony he had been told that his career with FGIS was finished. He has often told me that he was being harassed by techniques such as inadequate work assignments that did not justify his grade level, not enough work to do, an attempt to abolish his job and transfer him to Washington and excluding him from staff functions.

I must emphasize that I am only familiar with the alleged harassment from Dr. Watson's perspective. I did not know and do not know management's motives for taking the actions that were taken. I have known Mr. Gail Jackson, Dr. Watson's supervisor, for nearly 20 years. I have found him to be an effective and admired manager. Although the actions taken against Dr. Watson appear to be retaliatory, I have a hard time believing they were not orchestrated from a higher level.

In 1989 a large grain company in the Midwest was having trouble making good grades on sorghum that they were trying to ship. I think the grain was formerly from Commodity Credit Corporation stocks. The problem was that much of this grain had deteriorated to the point where it was either sour or musty. I understand several million bushels were involved. The grain company put direct and indirect pressure on FGIS to review or relax our standards so that they could move this grain without a discount for the inferior quality. I was told by two management officials at the Quality Assurance and Research Division that the FGIS Administrator asked for the standards to be somehow relaxed. Management informed him that they would do it if the request was received in writing. I understand this request was denied and the standards were not relaxed. Shortly thereafter, there was an investigational audit of the work unit of one of the managers who refused to relax standards. The person that was investigated is of impeccable integrity and he should never have been subjected to this treatment.

What makes the situation more intolerable is that an official of the grain company involved told an FGIS field office employee that they knew the grain was not good but that they had heard of other grain companies getting relief by complaining so they had all to gain and nothing to lose.

The FGIS Administrator asked me to conduct special projects to verify whether the Board of Appeals and Review's odor standards were aligned with everyone else. There was also a special panel of experts set up to grade this company's grain. Although none of these activities resulted in any significant changes, many questioned the Administrator's vigorous attempts to give this grain company special breaks, and the harassment of those responsible for ensuring that there is equal treatment for all.

That concludes my testimony.

[The prepared statement of Mr. McDonald follows:]

USDA-FGIS Technical Center
Quality Assurance & Research
P.O. Box 20285
Kansas City, Missouri 20285

October 2, 1990

Senator Max Baucus
United States Senate
Washington, D. C. 20510

Honorable Senator Max Baucus:

I received your inquiry concerning harassment and reprisals within FGIS late last Friday. My responses to some of your questions are listed below. As part of my testimony I would like to state that it is not my intent to attack or adversely reflect on the integrity any officials or condemn or criticize the policies of any agency. I have stated the facts and my opinions based on information available to me and to the best of my recollection. I only hope that out of this some good will come.

From 1980 through 1987 I was the FGIS field office manager of the Kansas City Field Office. My major responsibility was to supervise and regulate the official inspection of grain by the state of Missouri in the Western half of Missouri and the state of Kansas in the eastern third of Kansas. Both states are officially designated to perform this work for the USDA. I accomplished my work through a staff of about five.

Soon after beginning my tenure there my staff began reporting to me a significant number of irregularities by the State of Kansas inspection department. Among the more significant of the irregularities was the falsification of official grain inspection certificates. These acts are subject to criminal, civil, and administrative penalties. I was responsible for communicating these actions to higher level managers through appropriate channels, which I did. I was also responsible for implementing corrective actions. Legal enforcement actions were to be taken at higher levels of the Agency.

I basically encountered little interest in pursuing any penalties for these apparent violations at higher levels of FGIS. I believe this caused a further deterioration of the State of Kansas' willingness to comply with the United States Grain Standards Act.

In 1985, my staff noted that State of Kansas inspectors were failing to perform stowage exams prior to the loading of railroad hopper cars with grain. Our regulations state that each railroad car shall be physically observed to verify that it is clean and free from previous cargo prior to any official inspection of grain being loaded into it. Railroad hopper cars may carry many types of cargo. Often times railroad hopper cars contain residue from the previous cargo. This can vary from fertilizer, animal feeds, glass, and unknown foreign substances that may or may not be harmful to animals or humans. Quite often there is residue from previous grain cargos that has became rotten because of rainfall or infestation. This old grain would be a prime candidate for introducing molds and toxins into our food chain unnecessarily.

The inspectors were not performing these examinations, yet recording that they did on official records. The buyers of this grain would receive official grain inspection certificates with a statement saying each car was officially inspected and thus assume that purchased grain was received in hopper cars that were clean.

This situation was reported to the management of FGIS and the Kansas State Grain Inspection Department. The state inspectors signed a statement saying they knew these activities were wrong and that they would follow correct procedures in the future. Several months later one of my staff again notified me that the problems had not been corrected and were still occurring. The State inspectors were falsely stating on official work records that they had verified the cleanliness of each hopper car, when in fact they had not. The involved employees further suggested to me and one of my staff that management knew this was happening and condoned their actions. All of this was reported to FGIS management. My immediate supervisor later told me that the Kansas Bureau of Investigation investigated this problem and administered polygraphs to employees involved. He also told me that the investigation was inexplicably stopped before reaching the higher levels of the Kansas Grain Inspection Department.

A few months later an FGIS employee again reported to me that Kansas inspectors were falsely stating they had verified the cleanliness of hopper cars. Again, the situation was communicated to higher levels of FGIS. Through all of this I am not aware of any prosecution or penalties for the acts I have specified.

Because of these and other violations, the Administrator of the Federal Grain Inspection Service (FGIS) scheduled a meeting with the Governor of the State of Kansas to discuss the problems. During the meeting, the Governor never acknowledged any problems, only that they were proud of their Department and that they thought they were one on the finest. Very few in FGIS would agree with these statements.

In a private meeting with the Administrator, he suggested that I must improve the working relationship with the management of the Kansas Grain Inspection Department. He implied that I should go easier on them and not be so "gung ho". I pointed out that I also supervised the State of Missouri and had very few problems with their operation and perhaps it was the State of Kansas and not me that was the problem.

Later in 1987 my second level supervisor called me into his office in Washington, D.C., and told me I was being involuntarily detailed to our Quality Assurance and Research Division (QARD) for 60 days. He told me to try this new position and consider requesting reassignment if I liked it. When I asked him if I did not wish to be reassigned would he reassign me anyway, he replied that he would not say he would rule that out. I served my 60 days and even asked for an extension of the detail. Towards the end of my extension I notified my field office that I was returning to work. This apparently got back to the State of Kansas, who had apparently been working behind my back with the Administrator to have me transferred. A responsible official within the Kansas state government had quietly tipped me this was going on

I received a call from the Field Office Manager in Pasadena who asked about my situation. I told him I was going back to my field office the following week. He said he doubted it. I asked why. He told me management from the State of Kansas had called the Administrator in Pasadena and that he thought I would not be going back to the Field Office. Within a day or so I received notice that I was involuntarily reassigned to the QARD. I called the Administrator and asked him about this. He said the decision to reassign me was agreed to by him and my second level supervisor, who had threatened to reassign me in the first place. It should be noted that I provided damaging testimony against this second level manager at an age discrimination trial, which the department lost.

I believe that these actions were at best unethical and at worst a violation of my rights. The message to my coworkers was clear; do your job well, but when politics gets into it back off. I have had standards of performance which I have exceeded for the last 12 years. I think that my transfer was politically motivated on the part of the FGIS Administrator in a deal made with Kansas managers.

More than one responsible person in FGIS Headquarters told me after this incident that if any other official inspection agency had done the things Kansas did they would have lost their designation. This is a clear violation of Department ethics and perhaps illegal.

What I have provided is only a summary of my situation. There are far more details than can be provided in the allotted time.

I became acquainted with Dr. Watson after my transfer to QARD in early 1988. Dr. Watson was helpful and supportive of me in my attempts to establish quality assurance programs. I have respect for his career accomplishments and his knowledge of quality control. I know of no negative issues relating to his job performance.

Many persons were aware of the fact that Dr. Watson's testimony before a Joint Agricultural Hearing was not favorable to FGIS. Dr. Watson told me that after his testimony he had been told that his career with FGIS was finished. He has often told me that he was being harassed by techniques such as inadequate work assignments that did not justify his grade level, not enough work to do, an attempt to abolish his job and transfer him to Washington DC, and exclusion from staff functions.

I must emphasize that I am only familiar with the alleged harassment from Dr. Watson's perspective. I did not and do not know management's motives for taking the actions that were taken. I have known Mr. Gail Jackson, Dr. Watson's supervisor, for nearly 20 years. I have found him to be an effective and admired manager. Although the actions taken against Dr. Watson appear to me to be retaliatory, I have a hard time believing the actions were not orchestrated from a higher level.

In 1989 a large grain company in the midwest was having trouble making good grades on grain sorghum that they were trying to ship. I think the grain was formerly from Commodity Credit Corporation (CCC) stocks. The problem was that much of this grain had deteriorated to the point where it was either sour or musty. I understand several million bushels were involved. The grain company put direct and indirect pressure on FGIS to review or relax our standards so that they could move the grain without a discount for the inferior quality. I was told by two management officials at the QARD that the FGIS Administrator asked for the standards to be somehow relaxed. Management informed him that if he would give them the request in writing they would comply. I understand that this request was denied and the standards were not relaxed. Shortly thereafter the Administrator asked for an investigational audit of the work unit of one of the managers who refused to relax standards. The person that was investigated is of impeccable integrity and he should never have been subjected to this treatment.

What makes this situation more intolerable is that an official of the grain company involved told an FGIS field office employee that they knew the grain was not good, but that they had heard of other grain companies getting relief by complaining so they had all to gain and nothing to lose.

The FGIS Administrator asked me to conduct special projects to verify whether the Board of Appeals and Review's odor standards were aligned with everyone else. There was also a special panel of experts set up to grade this company's grain. Although none of these activities resulted in any significant changes, many questioned the Administrator's vigorous attempts to give this grain company special breaks.

Hopefully I have supplied you with some of the information you requested.

Sincerely,

Larry McDonald

Senator BAUCUS. Mr. Bicsak.

STATEMENT OF RONALD C. BICSAK, CHEMIST, FEDERAL GRAIN INSPECTION CENTER, U.S. DEPARTMENT OF AGRICULTURE, KANSAS CITY, MO

Mr. BICSAK. Good morning. My name is Ronald Bicsak and I work as a chemist for the Quality Assurance and Research Division in Kansas City.

I would like to begin by stating for the record that I feel morally and ethically obligated to state the truth as I know it and that my testimony here today is not a direct or indirect condemnation or criticism of the policies of the Department or agency, nor are they a direct or indirect attack or adverse reflection on the integrity of any official, officer or employee of the Department or agency.

I would also state for the record my concern for my future as a Government employee. I strongly urge this congressional committee to make it known that it has accepted the responsibility to protect those giving testimony here today and that immediate disciplinary action will be taken against any individual or individuals responsible for any form of retaliation occurring as a direct result of testimony given to this committee.

I was employed from May 10, 1987 until October 9, 1988, as the supervisor of the FGIS Wheat Protein Quality Control Program under the direction of the Quality Control Testing Branch Chief, who at that time was Dr. Watson. The initial implementation of the program was completed just prior to my employment with FGIS. During the first few weeks, I was apprised of the circumstances surrounding the lowering of the protein baseline and the initiating of a new national monitoring system. Dr. Watson made it known to me that, in his opinion, the second lowering of the protein baseline should not have been implemented. Although he disagreed with upper management's decision to lower the protein baseline, he issued a letter, as requested, to inform the field locations to lower their baseline values.

The ensuing events are a matter of record, so at this time I will not expound upon the details. I do, however, want to state that neither Dr. Watson nor I agreed with some of the ultimate decisions made by management during this ordeal; even so, we carried out their instructions precisely as directed.

Dr. Watson had on February 1, 1982, written and sent a position paper to the Administrator of FGIS on the protein program. It outlined the structure and implementation of a program that 5 years later was adopted and implemented. It is in fact the basis for the current Wheat Protein Monitoring Program. This program has over the past 3 years, vastly improved the accuracy and credibility of the National system for certifying wheat protein. Many of these improvements are due directly to the contributions made by Dr. Watson.

I was extremely surprised when I was told that Dr. Watson had been removed as the Branch Chief of Quality Control. As my supervisor, I had great respect for his knowledge of Government operations and for his experience in monitoring the quality control program. He presented himself as a dedicated and professional Federal employee. He has always been concerned about the efficient use of Government money and the effectiveness of the current programs. I was not aware of Dr. Watson having inadequate work assignments prior to the November 10, 1987, hearing. At this time, the quality control program was operating more effectively and efficiently than it had in the past. Prior to the protein hearing, I was not aware of any reason for management to even consider removing Dr. Watson from his position as Branch Chief. Upon his return from the hearing, Dr. Watson told me of the comments he had received from various individuals concerning his testimony and that he had been told essentially that his career with FGIS was finished.

After Dr. Watson's reassignment, he constantly commented to me that he was not being given meaningful or adequate work assignments. I was also made aware of the attempt to transfer him to a newly created position in Washington, DC and that it coincided with the findings of the desk audit, which stated that his reassigned position did not rate at the GM-14 level.

The detailing of Dr. Watson's various positions and the lack of adequate assignments over the past couple of years appears to correspond directly with the timeframe of his testimony given at the hearing on November 10, 1987. In my opinion, the preponderance of the evidence cannot be considered as just coincidental. Based upon the facts as I know them, I can draw only one logical conclusion: These actions constitute retaliation against Dr. Watson for his personal testimony given at that hearing.

Thank you.

Senator BAUCUS. Thank you, Mr. Bicsak.

[The prepared statement of Mr. Bicsak follows:]

Ronald C. Bicsak, Chemist
USDA-FGIS Technical Center
P.O. Box 20285
Kansas City, MO 64195

October 2, 1990

Senator, Max Baucus
United States Senate
Washington, D.C. 20510-2602

Dear Senator Baucus:

I am forwarding this information to you as requested in your letter to me, dated September 25, 1990. I hope this will be sufficient to answer the questions on my envolvement and opinions with regards to Dr. Clifford A. Watson.

I was employed from May 10, 19~~78~~87, until October 9, 1988, as the supervisor of the FGIS Wheat Protein Quality Control Program under the direction of the Quality Control and Testing Branch Chief, who at that time was Dr. Clifford A. Watson. The initial implementation of the program was completed just prior to my employment with FGIS. During the first few weeks, I was apprised of the circumstances surrounding the lowering of the protein baseline and the initiating of a new national monitoring system. Dr. Watson made it known to me that, in his opinion, the second lowering of the protein baseline should not have been implemented. Although he disagreed with upper managements' decision to lower the protein baseline, he issued a letter as requested, to inform the field locations to lower their baseline values. During the following weeks, I collected and analyzed NIR protein monitoring data from the field locations and the Quality Control (QC) NIR instruments and compared the results with the Kjeldahl reference method. I concluded that the NIR instruments were reading approximately two tenths higher than Kjeldahl. FGIS was receiving foreign complaints about the NIR readings being too high during this same time frame. I took all the data to Dr. Watson, who inturn advised the division director. I then began an in-house experiment to substantiate the findings. I adjusted the QC NIR bias readings up two tenths on a seperate channel. The following weeks of monitors from the field were then analyzed on both bias readings and by the Kjeldahl method. The data did support the original findings. I felt that there was no other option than to raise the reference baseline up two tenths to align the NIRs and the Kjeldahl. I met with Dr. Watson and the division director and discussed this with them. The information was given to the administrator to make the final decision. I want to state that neither Dr. Watson nor I agreed with some of the ultimate decisions made by management during this ordeal, even so, we carried out their instructions precisely as directed.

I was extremely surprised when I was told that Dr. Watson had been removed as the Branch Chief of Quality Control. As my supervisor, I had great respect for his knowledge of government operations and for his experience in managing the quality control program. He presented himself as a dedicated and professional federal employee. He has always been concerned about the efficient use of government money and the effectiveness of the current programs. The quality control program was operating more effectively and efficiently than in the past. Prior to the "Protein hearing", I was not aware of any reason for management to even consider removing Dr. Watson from his position as Branch Chief. Upon his return from the hearing, Dr. Watson told me of the comments he had received from various individuals concerning his testimony and that he had been told essentially that his career with FGIS was finished.

Dr. Watson had on February 1, 1982, written and sent a Position Paper to the administrator of FGIS on the Protein Program. It outlined the structure and implementation of a program that 5 years later was adopted and implemented. It is in fact the basis for the current Wheat Protein Monitoring Program. This program has over the past three years, vastly improved the accuracy and credibility of the national system for certifying wheat protein. Many of these improvements are due directly to the contributions made by Dr. Watson.

During the time I worked under Dr. Watson, I was not aware of him having inadequate work assignments prior to the November 10, 1990, hearing. After Dr. Watson's reassignment, he constantly commented to me that he was not being given meaningful or adequate work assignments. I was also made aware of the attempt to transfer him to a newly created position in Washington, D.C. and that it coincided with the findings of the desk audit, which stated that his reassigned position did not rate at the GM-14 level. Dr. Watson has spoken to me on numerous occasions concerning the questionable reasons for his being relieved from the Branch Chief position, the attempted transfer to Washington, D.C., the continuous details without being assigned to a permanent position, and the exclusion from staff functions that he has experienced since the hearing.

The abolishing of Dr. Watson's positions, the attempted transfer to Washington, D.C., and the detailing of Dr. Watson to various positions with the lack of adequate assignments over the past couple of years, appears to correspond directly with time frame of his testimony given at the hearing on November 10, 1987. Based on what I know, I cannot comprehend any reasonable explaination for these actions. I do consider these actions to be negative in connotation and regard them as adverse actions. Dr. Watson has also showed to me his annual performance rating for fiscal year 1988. I consider the justification given for the rating to be nothing less than retaliatory in nature. I have never been made aware of any justifiable reason for the inadequate assignments given to Dr. Watson during the time since the hearing on November 10, 1987. In my opinion, the preponderance of the evidence cannot be considered as just coincidental. Based upon the facts as I know them, I can draw only one logical conclusion, these actions constitute retaliation against Dr. Watson for his personal testimony given at that hearing.

Sincerely,

Rll C B

Ronald C. Bicsak

Senator BAUCUS. Mr. Devine.

STATEMENT OF THOMAS DEVINE, LEGAL DIRECTOR, GOVERNMENT ACCOUNTABILITY PROJECT, WASHINGTON, DC

Mr. DEVINE. Thank you.

I serve as the legal director of the Government Accountability Project (GAP). GAP is a nonprofit, nonpartisan organization that provides legal assistance to government and corporate whistleblowers. We fought for passage of the Whistleblower Protection Act of 1989.

It is particularly significant that you invited this testimony on alleged reprisals at the Department of Agriculture. GAP has represented approximately 150 USDA whistleblowers, more than any other employer, private or public. We do not seek these individuals out. They looked for and found us. The Department of Agriculture is number one on the merit system antihonor roll for a simple reason: free speech repression has been a way of life at this agency.

I would like to begin with three overviews based on this morning's testimony from the FGIS representatives. They suggest to me that the agency needs to do a much better job of respecting our constitutional system of checks and balances.

First, I would most emphatically challenge any assertion that this dispute is not Congress' business or that this forum is inappropriate. To summarize and slightly modify something I heard on the Civil War documentary, litigation is heck, and Dr. Watson has been in a state of "living heck" for the last 3 years. He shouldn't have to continue it. Litigation is only necessary when the system fails. Congress' job is to make sure that it doesn't.

Congressional oversight is essential for the agency leadership necessary to present whistleblower reprisals and make the merit system the exception rather than the rule.

Senator you are to be commended.

Second, in terms of free speech, civil servants are not prisoners of agency policy when it is illegal or represents abuse of authority, mismanagement, gross waste, or substantial and specific danger to public health and safety. Civil servants should cause confusion and disrupt agency policy that perpetuates Government illegality.

Based on some of the testimony I heard this morning, if certain of the FGIS officials were at merit system first grade, they would have to be held back.

Third, unless a disclosure is prohibited by statute, there is no such thing as an improper forum. It was perfectly appropriate to discuss mistakes in agency policy at a congressional hearing.

Let's turn to the case at hand. Senator, I believe that you were extremely gracious this morning in your evaluation of this particular personnel dispute. Based on my review of the record it is not a close call to conclude that civil service laws protecting the merit system were violated crudely and repeatedly in this case.

An initial review of the investigative file reveals at least 18 prohibited personnel practices involving 6 different personnel actions that were taken or proposed: a performance appraisal, two details, two reassignments, and loss of duties.

Contrary to this morning's testimony, it is no excuse that a job is correctly classified but not operating as defined. What counts under the law is the job in reality, not on paper.

Three prohibited personnel practices are relevant here: whistleblowing, reprisal for exercise of appeal rights, and violation of laws implementing the merit system. Two of those statutory laws illustrate the stakes in this dispute. First, the Lloyd-Lafollette Act provides:

> The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or member thereof, may not be interfered with or denied.

That has been the law of the land since 1912.

Second, the opening clause of the Code of Ethics for Government Service is the foundation for the merit system: "Any person in Government Service should: I. Put loyalty to the highest moral principles and to country above loyalty to persons, party or Government department." That goes to the heart of this case.

The dynamic of this case is that Dr. Watson blew the whistle by testifying truthfully to Congress. As Mr. Jackson stated today, he was guilty of not supporting agency policy. His superiors condemned him for demonstrating a greater loyalty to his country than to the Department of Agriculture. Something is fundamentally wrong here.

Definitionally, Dr. Watson engaged in protected speech. You do not have to be correct to be protected under the Lloyd-Lafollette Act for testifying to Congress. That is all you have to do, period. Similarly, his grievances and numerous informal complaints automatically qualify under section 2302(b)(9) as appeal rights that are protected under our due process system.

Although the whistleblower law required him to be right, the disclosure must only quality as a "reasonable belief," that is, rational and in good faith. Further, it is legally irrelevant whether an employee engages in the same dissent internally within a chain of command or publicly. Dr. Watson did both, as the agency has said repeatedly today, in his internal dissent preceding the first of the challenged personnel actions.

There should not be serious dispute that this case involves protected whistleblowing disclosures. Although we are certainly not experts in the laws involving grain measurement, today's testimony involving contradictions on whether or not there was a mistake means that his criticisms at least were reasonable.

Further, Dr. Watson's testimony almost certainly reveals violations of the laws requiring accurate Government records. It appears that there also may be disclosures of mismanagement, abuse of authority and possibly gross waste in this case.

Normally it is difficult to prove a causal link between protected speech and a challenged personnel action. Only the clumsiest, or most arrogant, supervisor admits to punishment for an employee's exercise of free speech rights. Amazingly, the Department of Agriculture did just that—orally and even in writing.

It was a stated reason on Dr. Watson's performance appraisal for an unacceptable ranking on one element, and it is hardly surprising that USDA's own office of personnel approved details in subsequent grievances. That would technically be the backbone of the agency's defense if there is an adversary proceeding. You don't ask your opponent's technical expert whether your opponent has done something wrong to you and expect to get support.

If circumstantial evidence were necessary to prove this prohibited personnel practice, it is bountiful. Five legally recognized circumstantial evidence factors illustrate this conclusion: opening an investigation of the employee; the timing of the personnel action; expressions of hostility; motives; and sustained pattern of violations.

I would add one other factor based on today's testimony, and that is the chilling effect on other employees of the agency.

Another circumstantial evidence factor for evaluating individual cases is whether a long-term trend exists of merit system violations. Unfortunately, that is the case at USDA, in GAP's experience to an increasing and unprecedented extent. The nature of the problem became clear to me after reviewing reprisals summarized in my written testimony involving 10 whistleblowers.[4]

I won't repeat those examples for considerations of brevity this morning, but I would like to add one other that became clear to me after I saw who was testifying. We are currently investing a case at the Animal and Plant Health Inspection Service, where another employee was disciplined on his performance appraisal. In fact, that employee was explicitly released from the Federal service for making disclosures to the Humane Society involving his job, which was to see that animals were properly treated during slaughter. In this particular case, the animals were being skinned before they died. When the whistleblower shared this with the Humane Society, he was fired for telling them.

These incidents that are summarized in the written testimony are representative of institutional intolerance of dissent. Dr. Watson's experience is not an aberration.

I would be glad to discuss the recommendations that are listed at the end of this testimony. But perhaps the most important for agency reform is the fourth recommendation, a policy statement by Secretary Yeutter that he will not tolerate free speech violations any longer.

Far more important than legal battles is the perception by agency managers that the Secretary's policy is not to allow reprisals of whistleblowers, and that he means it. Secretary Yeutter must make it unequivocally clear that the first command for sound management practices at this agency is to obey the laws protecting the merit system. Until that occurs, it will continue to be a badge of honor internally for agency officials to absorb congressional criticism. All too often, the internal perception is that officials such as those appearing today are taking the heat to defend agency leadership against threats by whistleblowers. I wouldn't be at all surprised if this morning's witnesses go back to the office to get pats on the back for doing just that.

That philosophy represents the antimerit system that threatens the Code of Ethics. By contrast, Mr. Chairman, your leadership in holding today's hearing illustrates the congressional oversight necessary to restore government for the people instead of government for itself.

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[4] See pp. 123-125 for the prepared testimony referred to by Mr. Devine.

Thank you.

[The prepared statement of Mr. Devine follows:]

TESTIMONY OF THOMAS DEVINE,

GOVERNMENT ACCOUNTABILITY PROJECT

before the

SENATE AGRICULTURE COMMITTEE

on

DR. CLIFFORD A. WATSON

October 4, 1990

MISTER CHAIRMAN:

Thank you for inviting my testimony. My name is Thomas Devine, and I serve as legal director of the Government Accountability Project. GAP is a non-profit, non-partisan organization that provides legal assistance to government and corporate whistleblowers, those employees who make disclosures challenging illegality or other serious misconduct where they work. GAP served as the leader of a grass roots coalition that fought successfully for passage of the Whistleblower Protection Act of 1989.

It is particularly appropriate that you invited testimony on alleged retaliation against Dr. Clifford Watson of the U.S. Department of Agriculture's (USDA) Federal Grain Inspection Service (FGIS). GAP has had represented approximately 150 whistleblowers at the Department of Agriculture -- more than at any other employer, private or public. It is significant that our organization did not seek out these clients. They looked for and found us. USDA is number one on the anti-honor roll for a simple reason: free speech repression is a way of life at that agency. My testimony below is a cursory summary of whether civil service laws were violated in Dr. Watson's case, as well as the environment at USDA in which this dispute occurred.

PROHIBITED PERSONNEL PRACTICES AGAINST DR. WATSON

It is not a close call to conclude that the civil service laws protecting the merit system were violated crudely and repeatedly in this case. In the Civil Service Reform Act of 1978

Congress established 11 prohibited personnel practices that represent bureaucratic violations of the merit system. In the Whistleblower Protection Act of 1989 Congress unanimously approved reinforced armor for the free speech shield in the 1978 law that had failed to protect whistleblowers.[1] An initial review of the investigative file in this case reveals at least 18 prohibited personnel practices involving six different personnel actions. No conclusion can be definitive without an adversary proceeding to hear both sides of the story, but at least some of the reprisals are so crude that they represent formal agency admissions of illegality.

In overview, it may be useful to describe the legal lay of the land for this conclusion. In order to establish jurisdiction for any prohibited personnel practice, the agency must take or propose what is called a "personnel action" under 5 U.S.C. §2302(a). In this case, at least six listed personnel actions have been taken or proposed -- two reassignments, two details, an unsatisfactory performance appraisal and a reduction of duties so severe that what was left could not support the employee's

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[1] In passing, it is worth noting some basic disinformation that USDA provided to your office in a September 20, 1990 letter. Contrary to Administrator John C. Foltz's assertion, Dr. Watson should not contact or file a complaint with the USDA Office of Inspector General (OIG) to exercise his rights under the Whistleblower Protection Act. That office is irrelevant to the procedures for employees to seek relief under the Act. Although in theory the OIG can investigate retaliation against whistleblowers, in practice it has served as one of USDA's most ruthless weapons against freedom of speech when the dissent threatens agency management.

"grade," or civil service rank.

Three prohibited personnel practices are relevant for Dr. Watson. Most obvious, it is illegal under 5 U.S.C. §2302(b)(8) to take or fail to take a personnel action because of whistleblowing -- legally defined as disclosures by an employee that evidence a reasonable belief of illegality, mismanagement, abuse of authority, gross waste or a substantial and specific danger to public health or safety. Personnel actions taken or proposed before July 9, 1989 are governed by the legal standards of the Civil Service Reform Act of 1989 for adjudicating the dispute. Those afterwards are controlled by the legal groundrules of the Whistleblower Protection Act of 1989, which are more realistic for employees.

Second, it is illegal under 5 U.S.C. §2302(b)(9) to retaliate against an employee for exercising civil service appeal rights. This law also includes protection for those pursuing informal complaints and grievances. Finally, it violates 5 U.S.C. §2302(b)(11) to take a personnel action that violates any law implementing or directly concerning merit system principles. Three are relevant here: the Privacy Act, 5 U.S.C. 552a[2]; and the Lloyd-Lafollette Act, 5 U.S.C. §7211; and the Code of Ethics for Government Service, 5 U.S.C. §7301. Because the latter two statutes illustrate the stakes in this dispute, it is worth quoting their operative language. The Lloyd-Lafollette Act provides --

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[2] In response to an inquiry from Senator Danforth, the agency released photocopies of Dr. Watson's personnel grievances. When questioned by GAP investigator John Workman, an agency representative replied that grievances are protected documents that cannot be released without an employee's consent.

> The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

The opening clause of the Code of Ethics is the foundation for the merit system: "Any person in Government Service should: I. Put loyalty to the highest moral principles and to country above loyalty to persons, party or Government department." The dynamic of this case is that Dr. Watson blew the whistle by testifying truthfully to Congress. His superiors condemned him for demonstrating a greater loyalty to his country than to the Department of Agriculture.

To demonstrate any prohibited personnel practice, an employee must pass a series of legal tests known as elements. In this instance, all the relevant laws involve the same four steps. Dr. Watson must prove that -- 1) he engaged in legally protected speech; 2) his superiors knew of should have known about his disclosure(s); 3) there is a causal relationship between his protected speech and the challenged personnel action(s). After Dr. Watson passes those tests, the burden of proof shifts to the Department of Agriculture, which can still earn a clean legal bill of health by proving that it would have taken the same actions anyway even in the absence of protected speech. A brief review of each element follows.

Definitionally, Dr. Watson engaged in protected speech under the Lloyd-Lafollette Act by testifying before Congress. Similarly, his grievances and numerous informal complaints automatically qualify under §2302(b)(9). The whistleblower law requires slightly more complicated analysis, but the conclusion is no less decisive. To qualify as a "reasonable belief," an employee's disclosure must be rational and in good faith. Here there appears to be little argument that Dr. Watson's testimony exceeded both boundaries: he was right. Period. Additionally, it is legally irrelevant whether an employee engages in the same dissent internally or publicly. Dr. Watson did both.

The disclosure also must evidence the categories of misconduct listed above. Although GAP is not expert in the laws involving grain measurement, almost certainly Dr. Watson's testimony revealed violations of the laws requiring accurate government records. See, e.g., 18 U.S.C. §1001. "Mismanagement" is government action not grounded in law that interferes with the efficient accomplishment of an agency's mission. "Abuse of authority" is similarly arbitrary action that causes favoritism or discrimination on the individual level. Since inaccurate grain measurements have a multi-million effect on commerce, they satisfy both categories. The inaccurate measuring systems also could represent "gross waste," if USDA ultimately spends significant amounts of money to correct the consequences from its years of false measurements.

Dr. Watson's superiors obviously knew of his disclosure, the second requirement to prove a merit system violation. The FGIS chief was sitting next to him at the 1987 congressional hearing.

Normally the third element is the most difficult to prove. Only the clumsiest, or most arrogant, supervisor admits to punishment for an employee's exercise of free speech rights. Amazingly, the Department of Agriculture did just that -- orally and even in writing. Although there may be valid argument about statements and threats in various discussions, the following explanation for a failing mark on one element of Dr. Watson's September 29, 1988 performance appraisal is beyond dispute: "Testimony indicating disagreement with agency policy uncommunicated outside the agency...." The smoke from this gun snuffs out any agency defense to alleged prohibited personnel practices. In effect, USDA accused Dr. Watson of being a whistleblower as the agency's explanation for a performance appraisal rating him unsatisfactory.

If circumstantial evidence were necessary to prove this prohibited personnel practice, it is bountiful. Five legally recognized circumstantial evidence factors illustrate this conclusion:

* opening an investigation of the employee. The agency's January 1988 investigation of Dr. Watson illustrates the first commandment of whistleblower reprisal: put the spotlight on the dissenter, to distract from the dissent. In this instance, the investigation was doubly revealing, since in part the objective of the probe was to discover previously unknown instances of

whistleblowing.

* timing. Consistently the challenged personnel actions were taken within the same performance appraisal period as the protected speech. Under the legislative history of the Whistleblower Protected Act, the timing link would be sufficient to establish a prima facie case of prohibited personnel practice.

* expressions of hostility. On numerous occasions, agency officials stated that Dr. Watson was "finished" because of his testimony, had not been sufficiently "diplomatic"; should have kept quiet if he could not support the agency; and similar criticisms. In effect, the agency was resentful that he had not reversed the priorities in the Code of Ethics and placed loyalty to the agency above loyalty to the public.

* motive. Dr. Watson's testimony in part sparked a significantly more unpleasant forum for his superiors than if he had defended the agency at the 1987 hearing chaired by Senator Baucus. This created a motive not only for revenge, but to chill other potential whistleblowers from contradicting the party line expressed by supervisors sitting next to them at public hearings.

* sustained pattern of violations. When misconduct challenged by dissent represents ingrained abuse rather than an aberration, there is even more reason to retaliate. It is one matter to challenge an incident; another to expose an indefensible way of life. In this instance, Dr. Watson was challenging nearly a decade of failing to properly maintain measuring equipment for wheat.

The final test of a prohibited personnel practice complaint is to determine whether the agency would have taken the same action on legitimate, independent grounds if the whistleblower had not spoken out. That is not a serious issue in this case. Dr. Watson had an unblemished history as one of the agency's most outstanding employees before he began engaging in protected activity. He remains a renowned leader in his field.

PATTERN AND PRACTICE OF FREE SPEECH RETALIATION

Another circumstantial evidence factor for evaluating individual cases is whether a long term trend exists of merit system violations. Unfortunately that is the case at USDA, in GAP's experience to an increasing and unprecedented extent. The nature of the problem becomes clear after a review of reprisals summarized below that involve ten whistleblowers.

* One veterinarian was reprimanded and threatened with dismissal if he again violated the agency ethics regulations by "adversely affecting public confidence in the integrity of the government." His "misconduct" had been to write an article accurately warning the public that USDA was approving fecally contaminated poultry for public consumption. Under this twisted logic, Paul Revere should have been branded a traitor for making colonists nervous that the British were coming.

* A whistleblower against the proposed elimination of U.S.-Canada border inspection has received notice for a 5 day suspension for violating conflict of interest rules. The agency cited three reasons for the proposed suspension: 1) taking an establishment employee out to dinner in appreciation for repairing the starter on his car (there are no car repair facilities in his town)-- instead of paying the employee money; 2) because an establishment employee to washed his car on company premises; and 3) paying the son of the establishment owner to mow his lawn so the son could earn some money to take his girlfriend to the high school prom.

* USDA is still trying to have a whistleblower prosecuted criminally for performing a moonlighting job on government time. The whistleblower's dissent had sparked the consumer campaign

that stopped an agency plan to eliminate daily inspection of processed food. Although USDA Office of Inspector General agents insisted they saw the whistleblower operating a word processor on government time at his moonlighting job, at that time the employee did not know how to use a computer and turned in all his reports in handwritten form.

* Another whistleblower against deregulation of processing inspection was disciplined for insubordination after refusing to falsify records to cover up an embarrassing incident where computer scheduling system sent him to inspect a plant that no longer operating.

* A key whistleblower dissenting internally against the Streamlined Inspection System -- Cattle, which was just discredited in a National Academy of Sciences report, also was criminally investigated by the OIG and threatened with prosecution for false travel vouchers unless he resigned. Records later obtained under the Privacy Act reveal that the U.S. Attorney already had rejected the case, in part based on the petty nature of the alleged misconduct and the highly tenuous evidence supporting the OIG's conclusions.

* An inspector was disciplined for insubordination after following Streamlined Inspection System -- Cattle regulations that required him to stop the line rather than make inspection decisions on livers so covered with fat and debris that relevant disease symptoms couldn't be seen.

* A whistleblower received a counseling letter for fighting, while he was hospitalized after the incident in question -- a surprise attack by an employee who jumped him. While the inspector was still incapacitated and recovering, USDA upgraded the counseling letter to a reprimand. The plant employee, who turned out to have a criminal record, became a fugitive from justice in order to avoid the arrest warrant issued by police for the unprovoked attack.

* The primary whistleblower on a 60 Minutes program that rocked the poultry industry had been charged with sexual harassment of industry women, although the alleged victims categorically denied that he either was verbally impolite or had physically touched them. USDA proposed discipline after the whistleblower -- 1) caught the plant trying to switch the tags in order to release hundreds of thousands of pounds of chicken that had been retained as unfit for human consumption; and 2) a supervisor from that company filed sex harassment charges whose accuracy had not yet been independently investigated. This same tactic was used against another of the 60 Minutes whistleblowers.

* After an inspector internally dissented against approval of contaminated meat and stood firm against company pressure to

reverse condemnations, USDA disciplined him allegedly for physically attacking two company employees -- again without independent corroboration. An administrative law judge threw out the charges after, inter alia, observing that each of the two alleged victims was twenty years younger and over fifty pounds heavier than the inspector, who also had severe heart condition.

These incidents are representative of institutional intolerance of dissent. To illustrate, immediately after Chicago inspectors' disclosures sparked withdrawal of the plan to eliminate daily processing inspection, regional officials imposed a blanket gag order, prohibiting them from responding to further media inquiries. In my experience, the chilling effect is worse among higher level management officials in the agency. The higher up the chain of command, the more frightened are USDA employees of reprisals and the more likely to insist that their disclosures to GAP remain as background information, or at least anonymous. To put it mildly, Dr. Watson's experience was not an aberration.

RECOMMENDATIONS

This hearing offers an opportunity not only for Dr. Watson to find the road to recovery, but the Department of Agriculture to begin the long journey back to the merit system.
The key to reaching this objective will be leadership from the top. Far more important than legal battles is the perception by agency managers that the Secretary's policy is not to allow reprisals by whistleblowers any longer, and that he means it. In order to achieve these goals, GAP recommends that USDA --

1) rescind the prohibited personnel practices and offer Dr.

Watson the same relief he would receive if he won through formal legal action after earning support from the Office of Special Counsel (OSC), a civil service agency responsible to protect whistleblowers in hearings before the Merit Systems Protection Board.

2) identify the officials responsible for the prohibited personnel practices and impose the disciplinary sanctions available under 5 U.S.C. §1207, again if the OSC chose to prosecute. If bureaucratic bullies are not held accountable for retaliation, there will be no deterrent effect because they will not have anything to lose by trying again. At worst, they won't get away with it.

3) open an investigation under Secretary Yeutter's leadership that will produce a report from the Secretary to the Senate Agriculture Committee on the full scope of policy misconduct covered by Dr. Watson's dissent. The Secretary's report not only should confirm the full extent of the problems, but identify their causes and outline a corrective action program to prevent their recurrence. To maintain an environment where civil service employees act as public servants instead of bureaucrats, it is essential that they accomplish reform through the risks they take by blowing the whistle. Merit Systems Protection Board surveys repeatedly have confirmed that fear of reprisal is only the number two reason why would-be whistleblowers remain silent after eyewitnessing serious government misconduct. The number one reason, cited by 60% of

employees who chose not to speak out, was that it wouldn't make any difference.

4) issue a policy statement from Secretary Yeutter to all employees that he will not tolerate those who are intolerant of free speech rights. He must make it unequivocally clear that the first commandment for agency managers is to obey the laws protecting the merit system. Until that occurs, it will continue to be a badge of honor internally for agency officials to absorb congressional criticism. All too often, the internal perception is that officials such as those appearing today are defending the agency leadership against threats by whistleblowers. That philosophy represents the anti-merit system that threatens the Code of Ethics. By contrast, Mr. Chairman, your leadership in holding today's hearing illustrates the congressional oversight necessary to restore government for the people, instead of for itself.

Senator BAUCUS. Thank you.

I would like to ask Mr. McDonald and Mr. Bicsak your opinions of the qualifications and performance of Dr. Watson when you worked with him. I think, Mr. Bicsak, you have had perhaps more direct experience.

Could you tell us in your personal opinion, is he a good supervisor; is he qualified for what he is doing; are there shortcomings? In your own words, if you could just tell us a little about your assessment of Dr. Watson's performance when you worked as an employee under his supervision?

Mr. BICSAK. When I first started with the protein program, there was quite a bit of controversy in the field because of the lowering of the protein content and all of the implementing of a new system——

Senator BAUCUS. And when was this, approximately?

Mr. BICSAK. This was in 1987; April of 1987 is when these things started occurring.

And my contacts were directly with the field people. That was my responsibility, to talk with the field office managers, talk with the field protein people and relate the information and coordinate the quality control end of it back at Kansas City.

I felt that I was receiving excellent guidance from Dr. Watson. I thought he was aware of all of the problems in the field and the confusion that was taking place because of the implementation of a new program. He had stated more than once that the lowering of the second protein two-tenths to the baseline was going to cause a problem, and in the first 2 months, while I was looking at the data that was coming in, I noticed that it indeed was lower, the field was lower than quality control, because of this two-tenths lowering.

When I took that information to him, we in turn took it to Gail Jackson and we decided to set up some type of standard within-house to substantiate this, and Dr. Watson and I developed a system to do that by changing the baseline in our reference instruments in Kansas City and then continue to monitor the field on both baselines, and it indeed showed that there was that two-tenths difference, and it was due to the second two-tenths lowering.

With this information, we went back again and made recommendations that it be raised.

During all of this time, none of the people in the field felt that Dr. Watson had ever in the past or currently was incompetent or not capable of handling the quality program. They were as amazed as I was when he was relieved of his duties. I got phone call after phone call—we couldn't figure out why.

Senator BAUCUS. So in your judgment, he was a good supervisor.

Mr. BICSAK. In my judgment, he was.

Senator BAUCUS. Now, what about the opinion of your fellow employees? Could you tell us, in their judgment, was he a good supervisor? What was their evaluation? What was the comment among fellow employees, associates, people you worked with and were in contact with, whether or not they worked for the Government?

Mr. BICSAK. I knew of no one who worked in the quality control end of it—and that was down to the very lower technician—who ever had anything bad to say about Dr. Watson and his ability to handle the program or as a supervisor. I have never heard anything contrary in respect to that.

Senator BAUCUS. Besides not hearing anything, do you know of anything that might lead one to conclude that he was not a good supervisor?

Mr. BICSAK. No.

Senator BAUCUS. You cannot think of anything that might possibly come to mind that would give someone else a possible reason for thinking that he was not a good supervisor.

Mr. BICSAK. I don't know how anybody could draw those conclusions because the program was improving the National system to a level that it had never achieved before. Foreign complaints were dropping. The field office people were more than satisfied with the results that they were getting back because we were getting closer and closer to making those instruments out there in the field correspond to the ones back at quality control.

So no one was disappointed with the system, and they felt that the responsibility for that was due to myself and Dr. Watson running the program.

Senator BAUCUS. Would you be in a position to hear complaints about his supervisory capabilities? Were you close enough to him and to other people so that you would normally know of supervisory complaints?

Mr. BICSAK. If there would have been complaints, the only complaints would have come from the individuals underneath him, as myself; it wouldn't have come from management, because I wasn't high enough in management to hear those types of things.

Senator BAUCUS. So you are just saying at your level there were no complaints.

Mr. BICSAK. There were no complaints.

Senator BAUCUS. So you are just not qualified to address whether there were complaints from higher up.

Mr. BICSAK. From higher up, no.

Senator BAUCUS. Again I ask the question, did you know of things that he did or did not do which may have led higher-ups to feel he did not have proper supervisory capabilities?

Mr. BICSAK. The only negative thing that was brought to my attention—and that was after the November 10 hearing—and previous to that, because of some of the talk around, that he had talked to people in Montana about the lowering of the two-tenths, and that it was improper. But that was secondhand information.

Senator BAUCUS. Mr. McDonald, in Kansas City, you knew Dr. Watson during some of this period, did you not?

Mr. MCDONALD. Yes, I did. I worked in the same building as he did for the last 3 years. Prior to that I was in a field office where my unit was monitored by his unit.

Senator BAUCUS. What was his reputation? Is he a good employee? I am just curious what his reputation was.

Mr. MCDONALD. Average to above-average. I didn't hear a lot of criticism among my peers, but I was once in a conversation with a supervisor above me who was Mr. Watson's supervisor, and I was told by him that—he was critical of his work.

Senator BAUCUS. For what reason?

Mr. MCDONALD. He didn't think he was a good leader.

Senator BAUCUS. What do you think he meant by that?

Mr. McDONALD. I really don't know. I answered to Dr. Watson's staff as far as proteins went, and I complimented to one of my superior's about Dr. Watson's presentation at a manager's meeting, and his (Dr. Watson's supervisor) comments back to me were that he didn't think he was all that effective a leader in the branch that he was in.

Senator BAUCUS. It is my understanding that you might be aware of telephone calls in the last couple weeks from Mr. Robertson's office, trying to dig up adverse information about you, or Mr. Bicsak or Dr. Watson? Can you tell us about that?

Mr. McDONALD. Well, I was told last week that someone in APHIS was calling around asking people about me—almost verbatim, "a five-minute history of Larry McDonald". I don't know if they were asking about Mr. Bicsak or not.

Senator BAUCUS. But the APHIS office was asking about you.

Mr. McDONALD. Yes.

Senator BAUCUS. From all four of you then there seems to be a pattern of reprisals by APHIS officials against you for speaking out to correct a problem. Is that correct?

Mr. McDONALD. When you say APHIS, do you mean FGIS?

Senator BAUCUS. Yes, FGIS.

Mr. McDONALD. OK. Would you restate the question?

Senator BAUCUS. Is there a pattern within the Federal Grain Inspection Service whereby reprisals have been taken against employees who have spoken out in good faith against a perceived wrong in an effort to correct the problem? Is there a pattern of that occurring?

Mr. McDONALD. I don't think that there is more than one would expect. However, I feel like——

Senator BAUCUS. The question is what does one expect.

Mr. McDONALD. I can't answer that. However, I feel that there is a genuine fear of disclosing things that we are aware of, wrongdoing or noncompliance with our act and regulations; there is a genuine fear among many people not to go too far with that.

Senator BAUCUS. Why is that? Is there something about the nature of the work? Is there something about the management? Why is it that there seems to be a significant genuine fear of disclosing shortcomings of the agency?

Mr. McDONALD. Well, under the previous administration, and in my testimony, most people who appeared to try to pursue wrongdoing suddenly found themselves with different jobs or being investigated. And that sent a message to all our peers to be careful; you know, do your job to the best of your ability, but if you start finding things that upper management doesn't want you to find, perhaps you should reconsider whether you should pursue it any further or not.

Senator BAUCUS. Dr. Watson, you said you hope that this hearing addresses some of the problems of upper management—I don't want to put words in your mouth, Dr. Watson, but are there specific problems of upper management in the Federal Grain Inspection Service that should be addressed, and if so, what is the nature of those problems?

Dr. **Watson**. In my particular case I believe there is, and this goes back to many years, back in the early 1980's, I continually tried to make improvements in the wheat protein program. As Ron Bicsak pointed out, I wrote a position paper on this to the Administrator then, Dr. Kenneth Gilles, recommending certain actions. But those recommendations in some cases actually were even opposed. And I could never get recommendations passed because it appeared that upper management did not want to accept the decisions or recommendations of lower or midmanagers.

Senator **Baucus**. What was the nature—can you characterize the general drift of those recommendations? Was that to improve the quality of the standards?

Dr. **Watson**. Yes, it was——

Senator **Baucus**. I am just curious as to—give us one idea of your recommendations.

Dr. **Watson**. In 1982, or back about then, we had continual problems with the wheat protein program. Some of the recommendations I made, as Ron Bicsak mentioned, were implemented 5 years later. One was the use of national reference samples. One was the updating of calibrations on a yearly basis. The updating of the calibrations was actually opposed by Dr. Gilles; I have a letter to that effect in my file.

Senator **Baucus**. What was the basis, in your judgment, for yearly revaluations—what are they called?

Dr. **Watson**. Yearly updating our calibrations.

Senator **Baucus**. Yes. What was the reason you felt that the calibrations should be updated yearly, and what were his objections?

Dr. **Watson**. My feeling was, and I think this is borne out, that you have changes in your wheat by varieties and by years of growth, and to offset that and to average those differences out, you must have several years' data entered into your calibration. The only way you can do that is do it over several years' period. You can't do it on any one year. If you do that, you are going to be off in your calibrations. I think this a known fact from a scientific point of view. And everybody now agrees that you need several years' data in your calibrations.

I made this recommendation in 1982 because Canada had substantiated that, and that is what they had been doing.

Senator **Baucus**. Canada recalibrates yearly?

Dr. **Watson**. They update their calibrations almost continually, not yearly, but almost continually as they harvest their crop.

Senator **Baucus**. And what was Mr. Gilles' objection?

Dr. **Watson**. Generally, he felt it was the responsibility of industry, and that it was too costly for us to do. But I will say——

Senator **Baucus**. As a consequence of infrequent calibrations, what happens to the American farmer, the American consumer? What is the consequence of calibrations that are too infrequent?

Dr. **Watson**. Your protein accuracy is off. It can either be too high, too low, or whatever. It depends on how your calibration is showing in relation to the wheat samples or wheat that is marketed that particular year.

Senator **Baucus**. How much more costly would it be to update your calibration yearly compared to every several years? How much more costly would that be?

Dr. WATSON. I would say it would be less costly to the American taxpayer and to the farm industry to update every year because the farmers and industry could stand to use millions of dollars any one year if protein accuracy was off.

Now, it is obviously going to cost several thousand dollars to update our calibrations on a yearly basis. But to me, we cannot afford not to do it.

Senator BAUCUS. What was the financial loss to Montana farmers when the protein calibration was two-tenths of a percent too low?

Dr. WATSON. I have heard things upward of about $3 million, but I have no way of knowing. I never sat down and put my pencil to paper on that, but I'm sure it can be calculated.

Senator BAUCUS. Now, when I asked the early panel why you were not given more work, to be honest with you, I couldn't make much sense of what they were saying. But the gist of what the earlier panel said was, well, you didn't try hard enough, and you did not take enough initiative within the job descriptions that were given you. I am just curious what your reaction to those comments is.

Dr. WATSON. I would like to respond to that. I had been told repeatedly by Mr. Jackson that my position is Assistant to the Director. I am not to take initiative to go out and get projects done; I am to do what I am told to do and nothing else. Therefore, I have requested work—I even started work at times but was told not to do it—so I had to back off.

Senator BAUCUS. So you are saying he told you just not to do anything——

Dr. WATSON. That is correct.

Senator BAUCUS [continuing]. Except where he precisely requested.

Dr. WATSON. What he told me to do. That is absolutely correct.

Senator BAUCUS. And you are also telling us that he asked you to do very little work.

Dr. WATSON. That is right. I repeatedly requested work, but it was never assigned.

Now, I will say that just recently here, and in defense of Gail Jackson, I don't know if this order came from higher up or not, because he said he did not have the opportunity to assign me more work until just recently.

Senator BAUCUS. I also get the drift from listening to you and the panel that you think many of these decisions are not his, specifically, but they are decisions that he is carrying out at the behest of someone else. Who might that person be? Who might those people be? Who is basically calling the shots here as to what should be done with Dr. Watson?

Dr. WATSON. Well, if I had to guess, I'd guess it would be his supervisor, or former supervisor at the time, Mr. Miller.

Senator BAUCUS. And the present Administrator?

Dr. WATSON. I don't think Mr. Foltz has anything to do with it. I don't think he has any knowledge——

Senator BAUCUS. Just so I know, is that——

Dr. WATSON. I really don't believe——

Senator BAUCUS. Would that be Mr. Robertson?

Dr. **Watson**. No, Mr. Foltz, our Administrator, I don't think has any knowledge of this or had any knowledge——

Senator **Baucus**. Who is Mr. Jackson's immediate supervisor?

Dr. **Watson**. Right now, it is Mr. Foltz.

Senator **Baucus**. I am just trying to get it straight. Do you think it is Mr. Miller?

Dr. **Watson**. It was Mr. Miller, yes, because most of this action occurred under Miller's administration.

Senator **Baucus**. And today, who?

Dr. **Watson**. I'm not so sure. I think this is just a carryover from what had been going on, really. I don't want to condemn or imply whatsoever Mr. Foltz being involved here, because I haven't had that much to do—but what experience I have had and seen, he is an excellent Administrator.

Senator **Baucus**. All right. Mr. Devine, you said that there is a greater number of whistleblower cases—is that with the USDA generally, or is that confined to a certain Division within USDA? I am just curious as to what your experience is.

Mr. **Devine**. It is at the Department of Agriculture, generally, Senator, and the majority of the cases have come from the Food Safety and Inspection Service, involving meat and poultry safety.

I would like to add a P.S. to Mr. McDonald's earlier answer about the fear of reprisal at the agency, and that concerns the consequences. The latest study by the Merit Systems Protection Board on whistleblowers or would—be whistleblowers concluded that 37 percent of employees who were personal eyewitnesses to illegality, substantial health threats, mismanagement and abuse of authority or waste involving more than $10,000 kept quiet, looked the other way, didn't say anything, due to fear of reprisal. And the study's authors extrapolated that to one-half million civil servants who thought they didn't have the option to challenge the misconduct that they saw, and would have challenged it if they thought they were free to.

I think it is very clear that we wouldn't be in the severe budget agonies we have today if the merit service moved from paper to reality in the civil service.

Senator **Baucus**. Mr. Bicsak and Mr. McDonald, you are taking some risk coming here today. You are both USDA employees, you both have many years ahead of you, you both are potentially concerned with subtle if not so subtle reprisal, difficult to document.

Why are you here?

Mr. **McDonald**. I believe in our Federal grain inspection system. I think, as Dr. Watson said, that we have the best in the world and have the potential to make it much, much better. I really think our work is important. We know that our exports are important, and the safety of our domestic food supply is important. And I felt like my testimony here today might help do some long-term good and get the message to those who can help FGIS improve, that we need to do a better job taking care of our employees and enforcing the grain quality rules that we already have in place.

Senator **Baucus**. What are some improvements that immediately come to mind? You say we have the best in the world, but we can improve upon it. What might those improvements be, just generally?

Mr. McDonald. Enforcing infractions of the grading standards that we have. In my testimony, I mentioned the hopper cars of grain, we don't know whether they were clean or not. They were loaded, and in my opinion, there should have been some very substantial punitive actions against either the agency or the management to make sure that did not occur again. And as was also in my testimony, it occurred not only once, but twice, afterward. I feel like the unequal enforcement of our standards within FGIS is a big problem. We need to be evenhanded and enforce the rules that we already have.

I sometimes find it a little ironic that as you and your colleagues in the House of Representatives work on grain quality legislation that we will probably be responsible for implementing, we are not doing a good job of enforcing the ones we already have in place.

Senator Baucus. Why is that? Why are we not doing a good job enforcing the standards we already have in place?

Mr. McDonald. Because, sir, the program is administered through designations; either States or private individuals are designated. And I believe there is a genuine fear among our Compliance Division, and perhaps people above them, that they are going to be challenged when they challenge these State and private entities to do a better job.

Senator Baucus. How do we give them a little more backbone? What systems, procedures, changes——

Mr. McDonald. I think we need to develop standards of performance for these official inspection agencies that can be uniformly applied and not subjective, although there has to be some subjectivity, so that when there are clear-cut cases of misconduct and violations of the Grain Standard Act, it becomes almost a rubberstamp that something is going to happen to correct the situation.

Senator Baucus. Is there much disagreement over that among your peers?

Mr. McDonald. Among my peers there is no disagreement; it is unanimous.

Senator Baucus. Mr. Bicsak, why are you here?

Mr. Bicsak. Well, I felt that I needed to offer my opinion because I felt that in my opinion there were some wrongs. I have not seen any of the accusations against Dr. Watson for misperformance or not performing his duties, and I just felt that it was my moral or ethical responsibility to report the truth as I saw it, and that is what I did here today.

Senator Baucus. I have a lot of admiration for all of you. It takes guts and courage for you to do what you are doing. There are not very many Federal employees, there are not very many people, who would do what you are doing. Coming here, saying what you honestly think is right, saying what you think should be done; knowing that it is going to ruffle some feathers of your superiors; knowing that they are going to be a bit embarrassed by your testimony because they are superiors; and, knowing that potentially some action could be taken against you.

So I have a lot of admiration for you, and I think I can speak in behalf of the American people who also, if they could see you here today, would also admire you for what you are doing.

Now, some might say that, well, you are just a few disgruntled employees. That couldn't be farther from the truth in my judgment. Just listening to you, looking to see how you handle yourselves, the words you choose, your body language, and who you are as people, it is my firm conviction that you are here because you are very good, dedicated public servants, and you want to improve upon an already good system.

I very much respect and very much admire your courage and the time and effort you have taken to come here.

You mentioned earlier, Mr. Bicsak, that you hope this committee watches what happens to you and to Mr. McDonald and Dr. Watson, and others, as a consequence of testifying today. I can assure you that this committee will be watching very closely what happens in the future.

I can also assure you that we will be watching the actions of management at USDA to see what actions they take in the future, generally, not only with respect to the large number of whistleblower cases that are now pending before the USDA, but with any other actions that may subsequently be pending before that agency.

We all have a high duty on us as public officials, whether we are elected or unelected, to go the extra mile. I just urge all of us to do that because when we do, it is its own greatest reward, not the petty rewards of recrimination and reprisal, but the deep, fulfilling reward of having done one's job as well as it could possibly be done.

So I encourage all of us to pursue that goal. I thank you all for coming.

Dr. Watson, I particularly thank you, and I regret the things that have happened to you. I very much hope that the agency exercises a little discretion here and compensates you for the actions it has taken against you. I understand you are going to be retiring fairly soon, but between now and then, I hope the agency makes up to you in my judgment the adverse actions that it has taken in the past against you.

Do any of you have any other comments you want to make before we adjourn the hearing?

Dr. WATSON. I would like to make a couple, and that is in response to a couple of comments that were made previously by the other panel. One was that back in the early 1980's, mideighties and so on, about my supervision, et cetera. I would like to remind those people and report here today that during that period of time, I was not only Chief of the Quality Control Branch, but Acting Chief of the Research and Development Branch. I had two branches to supervise.

At that time, I had inadequate staff, as borne out later; I had four people to run the protein program. They have approximately nine people now. It is two more than what I had recommended back in 1982. Now, how could I run a program with less than half the people I needed?

In regard to my testimony, yes indeed I did disagree with the lowering of the protein two-tenths percent the first time. But I think if you read my full statement, I said across-the-board. There was never any evidence pointed out that we should lower the protein across-the-board on Hard Red Spring wheat. It was an isolated—field offices and official agencies that the protein should be lowered.

The reason for that was we had regional and sometimes local reference samples, and because of that, we had a discrepancy in our baseline values from location to location, and our Kjeldahl protein in Kansas City at the time, or during some of the time, which is down at Richards a portion of the time where reference samples have been established, we had a variation of eight-tenths percent protein between summer and winter on a cyclic basis. Now, depending when you ran and established the reference value for your reference samples at location, it was maybe four-tenths low, four-tenths high, eight-tenths high, eight-tenths low. We never knew where. But I knew what was wrong with the protein program. I knew how to bring it into concert. And I could not get those recommendations through—not until after the November 10 hearing.

Senator BAUCUS. Well, Dr. Watson, it is clear that you are also one of those great public servants who is trying his darndest all the time just to improve upon the system. That is very clear from what you have said. I don't know a lot about the protein baseline or know a lot about the specifics that you are referring to, but just listening to you, it is clear to me that your sole goal is to improve upon the system, and for the right reasons. I commend you for it.

Dr. WATSON. Thank you.

Senator BAUCUS. The hearing is adjourned.

[Whereupon, at 11:59 a.m., the committee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

APPENDIX

Prepared Statement of Allen E. Williams, Unit Manager, Montana Department of Agriculture, State Grain Laboratory, Great Falls, MT

Mr. Chairman, members of the committee, I appreciate this opportunity to submit testimony in support of Dr. Cliff Watson's attempt to resolve his employment situation with the FGIS.

A brief background is in order so that you understand our relationship with USDA-FGIS. Every 3 years, the Montana Department of Agriculture enters into an agreement, which is more commonly referred to as "DESIGNATION AS AN OFFICIAL AGENCY FOR OFFICIAL INSPECTION UNDER THE U.S. GRAIN STANDARDS ACT, AS AMENDED."

The designation allows the Montana Department of Agriculture to perform all functions in accordance with and comply with all requirements of the act, regulations, and FGIS instructions in effect at the time of the designation within the geographic boundaries of our State.

Our current designation will terminate on August 31, 1993.

The Montana Department of Agriculture, State Grain Laboratory, is proud to be part of the nationwide official grain inspection system. The State Grain Laboratory has taken pride in working in cooperation with the FGIS since 1920.

The following are responses to questions asked by Senator Max Baucus in his letter to me dated September 25, 1990.

Dr. Watson's experience with near infrared equipment since its invention by Dr. Karl Norris and Dr. Watson's knowledge, experience, and reputation in the field of cereal chemistry is unparalleled. Dr. Watson's involvement and leadership of the Quality Control Branch, Protein Section, has lead the FGIS NIR protein program from its infancy to a respected nationwide program.

A large portion of the U.S. wheat crop is exported. Approximately, 75 percent of Montana's wheat crop is sold to foreign countries. The contract price for wheat is based upon grade and minimum protein levels. For the United States to compete with other grain growing countries for our share of the world market, it is imperative to maintain unquestionable integrity of our nationwide inspection and protein system.

Dr. Watson's removal as Chief, Quality Control Branch, during the controversial protein changes in the spring and summer of 1987 and resulting joint congressional hearings of November 10, 1987, needs to be explained by the FGIS. Dr. Watson's knowledge and leadership in the field of protein determinations are recognized by myself, the grain inspection profession and the grain industry as a whole. I feel that if the FGIS has valid reasons for removing Dr. Watson as Chief of the Quality Control Branch, other than his honest and truthful testimony of November 10, 1987, they should be required to disclose and verify these reasons. If the FGIS gives reasons for Dr. Watson's removal, I feel they should answer why recommendations made by Dr. Watson numerous times to improve the protein system before the hearing were implemented by the FGIS after Dr. Watson's removal.

The FGIS began determining protein percentage and supervising official agencies protein programs with the NIR protein system in 1978. Many of the measures and procedures used to standardize the protein system were based upon measures and procedures that had worked well for many years in the standardization of grades. Many of these initial programs used to monitor the NIR protein system were unworkable and failed. One of Dr. Watson's contributions to the wheat protein program was to seek and receive input on solutions to the problems that plagued the initial system from various sources, including the State of Montana, whose experience with protein systems began in 1920. Dr. Watson's cooperation in trying to resolve differences in protein values between geographic areas and numerous other protein problems in a courteous and professional manner were an asset to the positive image of the FGIS. Dr. Watson's foresight in promoting nationwide standard reference samples instead of regional reference samples, yearly updating of protein calibrations, and many improvements in the procedures for protein determination changed the early protein system from one of continuous problems to today's system of consistency, stability, and integrity. If Dr. Watson would have had the staff and resources to implement his recommendations made before the hearing of November 10, 1987, I am confident we would have had an excellent and accurate nationwide protein system. I am also confident that with the present staffing and resources of the protein testing section Dr. Watson would currently manage an excellent and accurate protein system.

Government employees, at any level, should feel free to express honest and truthful ideas or viewpoints without fear of retaliation, damage to their reputation or livelihoods especially before government bodies. Without the ability of FGIS employees to give testimony without fear of retaliation, we stand to damage the credibility and integrity of our national inspection system and diminish our competitiveness in the world market. Many people in the grain inspection profession feel the FGIS has had a past history of retaliating against FGIS employees or official agencies who express different opinions or viewpoints not favorable to the FGIS. A past employee of the Moscow field office may have switched occupations because of retaliation for expressing viewpoints not favorable to the FGIS on protein procedures. I, myself, have sensed a change in the relationship with the field office manager of our supervising field office from one of total cooperation to one of a much less cooperative nature since the protein hearing of 1987.

During years when the United States is experiencing normal weather patterns and precipitation, Montana has the climate and grower experience to produce high quality, high protein wheats. The major factor in determining the price of Montana's wheat crop is based on the percentage of protein. In normal years, Montana's wheat crop is used to blend with wheats from other States not blessed with Montana's climate. In most years, Montana's wheat crop commands protein premiums ranging from 3 to 12 cents per bushel per one quarter of each percent of protein above market requirements. With the huge amount of Montana growers money involved in accurate protein determinations, confidence in our nationwide protein system is imperative.

OCTOBER 3, 1990.

Senate Committee on Agriculture, 328A Senate Russell Building, Washington, DC.
ATTN: Mary Byrne in re: Whistleblower Problem in FGIS.

Dear Senator Baucus and Honorable Committee Members: American grain producers sell their product in a worldwide, as well as a domestic market. They get paid based on quality. Quality determination, therefore, must be accurate to ensure the producer is compensated properly, and that the buyer gets what he pays for. The integrity of the grain grading system must be impeccable, even when errors in processes occur.

In the second half of 1987, it became apparent to our organizations that there was an error in the calibration of FGIS's near infrared protein reading machines. After investigation, and quite a few allegations, FGIS was asked to testify before the House and Senate Agriculture Committees. At those hearings, Dr. Cliff Watson, who works for FGIS, testified that he thought that at least part of the allegations that had been leveled were correct, and that FGIS had made a mistake. While it is important for witnesses at hearings to be well informed, it matters less that Dr. Watson and people like him are correct in saying that an agency of the government made a mistake, than the fact that they should be free and able to make such comments without fear of reprisals.

In any agency, endeavor, or business, errors will be made. The way to maintain accuracy is to correct those errors in an orderly and open manner, rather than hide the fact that the error ever occurred. This may be more true in Federal agencies than in the business world because, in many Federal agencies like FGIS, changes are made by rule, not by legislation, or as a result of outside economic forces. Therefore, the agency has to overcome its own inertia to make necessary changes and this is a difficult thing to do, even when there is a candid consideration of changes or errors. To quash internal attempts at reform or acknowledgements of errors has no long term benefit and has only the perceived short term benefit of the people responsible not having to shoulder that responsibility. This lack of credibility clearly isn't the model by which we want to operate government.

As parties who stand to either benefit or lose from actions taken by many Federal agencies, we believe it is important that those agencies operate in a manner that allows (or better yet, encourages) people to come forth with new ideas and constructive criticisms without fear of reprisal. In fact, if this current hearing doesn't send a strong message to government agencies like FGIS that any workplace punishment of employees for speaking up in an effort to correct errors will not be tolerated, then how will anyone affect change in future programs and policies? Surely there will be no more people like Dr. Watson who will be willing to testify.

While we feel it is incumbent upon Dr. Watson to prove that he actually was the object of reprisals, it is also incumbent upon legislative committees who call people to testify to follow up and make sure that those witnesses are not mistreated as a result.

EVERETT SNORTLAND,
Director, Montana Department of Agriculture.
GEORGE PAUL,
Executive Vice President, Montana Farmers Union.
RANDY JOHNSON,
Executive Vice President, Montana Grain Growers Association.
JIM CHRISTIANSON,
Executive Vice President, Montana Wheat and Barley Committee.

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